

AIBEA's

LEGAL NEWS

Q – 1 & 2 Jan. to june 2023

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
From AIBEA
BULLETIN Q – 1&2
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JANUARY

COMPASSIONATE APPOINTMENT

Settlement – Industrial Disputes Act, 1947, Sections 12 and 18 – Labour Court passed award that Petitioner management must extend facility of appointment on compassionate grounds to dependents of employees who died during their period of service and directed Management to consider each and every case subject to qualifications and fitness prescribed in this regard, hence this petition – Whether findings returned and relief granted by Labour Court legally sustainable – *Held*, Labour Court had not perused settlements operating in field which regulated subject matter of compassionate appointment and granted relief to dependents of deceased workmen in absolute terms – Labour Court had proceeded with reference in disregard of settled position of law – This was basic and fundamental flaw in impugned award and goes to root of matter – Impugned award was *perverse*, being contrary to settled position of law – Labour Court could not have directed for appointment of dependents of each and every employee who died in harness – Labour Court could at most give direction to management to consider individual applications of dependents on basis of considerations and could not give mandate directing Petitioner to give appointment to dependents – Such direction given by Labour Court was usurpation of power of management and tinkers with administrative policy of Petitioner – Impugned Award suffers from infirmities, hence, set aside – Petition allowed. [*N.T.P.C. v. Badarpur Power Engineers*]

(GAURANG KANTH, J.)
2023-I-LLJ-91 (Del) LNIND 2022 DEL 3434

Compassionate Appointment – Petitioner-wife challenged order passed by Respondent-University rejecting Petitioner's application for compassionate appointment, on ground that Petitioner's late husband, who died-in-harness, had not completed three years regular service, hence this petition – Whether, Petitioner entitled for compassionate appointment – *Held*, provision for grant of compassionate appointment was beneficial provision and had to be construed meaningfully – Words used in Section were "at least three years continuous service in University" – Plainly read, they only mean three years continuous service and do not mean three years

regular service – Impugned order rejecting Petitioner's application to seek compassionate appointment, quashed – Respondent-Authorities directed to consider Petitioner's case for compassionate appointment on its own merits – Petition allowed. [*Manju v. Establishment Officer*]

(SHRI VIPIN SANGHI, C.J.)
2023-I-LLJ-202 (Uttar) LNIND 2022 UTTAR 11

Regularization of Service – Petitioner-employee sought for directing Respondents to regularize his service under work charge establishment in any Group-C post, and grant all service and consequential benefits, and to correct gradation list in respect of date of his engagement, hence this petition – Whether, service of Petitioner could be regularized with all service benefits – *Held*, Petitioner had clear case for being taken as work-charge employee along with his counterparts from date of their engagement at least bringing chance in his date of appointment, in gradation list – Declaration by Petitioner to have been working as H.R. from specified year could not override official admission through all documents which all goes to show that Petitioner was at least continuing as N.M.R prior to specified year – Opposite parties directed to immediately correct date of engagement of Petitioner in gradation list – Petition allowed. [*Bhabagrahi* Nayak *v. State of Odisha*]

(BISWANATH RATH, J.)
2023-I-LLJ-183 (Ori)
LNIND 2022 ORI 1

GRATUITY

Retirement – Payment of Gratuity Act, 1972, Section 4(2) – Petitioner's appeal before appellate authority dismissed confirming judgment passed by Controlling Officer allowing application filed by Respondent-employee for claiming gratuity, hence this petition – Whether, Respondent no. 2 could be paid gratuity for specified period, for which he was out of service – *Held*, once award passed by Labour Court directing continuity of service become final, entire period from date of appointment till reinstatement required to be calculated as per provisions of Section 4(2) of Act – Subsequently, also service of Respondent regularized – Respondent actually retired from service – At that time, she was having basic pay of Rs.16,700 + Dearness Allowances which came to Rs.17,368/-. – By adopting calculation, total years of service of Respondent no. 2 would be 12 years – Controlling Authority while calculating service arrived at amount of Rs.1,20,240/- – No illegality or infirmity in such calculation – Controlling Authority appropriately calculated amount of Respondent no. 2 – Petition dismissed. [*I P Mission G.H.S. v. State of Gujarat*]

(A.S. SUPEHIA, J.)
2023-I-LLJ-232 (Guj)
LNIND 2022 GUJ 12

Recovery Order – Industrial Disputes Act, 1947, Sections 10, 25 N and 33-C (1) and (2) – Petitioner challenged impugned Recovery order, and impugned notice both issued by Respondent no. 2 hence this petition – Whether, Respondent no. 2 was justified in invoking executory mechanism under Section 33C (1) of Act for issuing recovery order, in absence of their being any award or settlement or adjudication under provisions of Chapter V-A and V-B of Act – *Held*, invocation of power under Section 33-C(1) of Act must be preceded by award or settlement under which right of payment of sum was bestowed upon workman – Actual dispute was not regarding computation of retrenchment compensation under Section 33-C (1) & (2) of Act, but rather revolves around question that whether services of workmen were retrenched in contravention of Section 25 N of Act – Respondent no. 2 misconstrued requirement provided under Section 33-C(1) of Act – In absence of any award or settlement in support of recovery order, impugned order, was illegal, *perverse* and arbitrary – Impugned notice also holds no force as no recovery certificate could be granted without meeting with requisites of provision under Act – Impugned order and impugned notice, quashed – Liberty being granted to parties to seek their remedy by raising Industrial Dispute under Section 10 of Act – Petition allowed. [*Madan Trading Co. Ltd v. Govt. of NCT of Delhi*]

(GAURANK KANTH, J.)
2023-I-LLJ-119 (Del)
LNIND 2022 DEL 3589

PENSION BENEFITS

Entitlement – Gujarat Civil Services (Pension) Rules, 2002, Rules 88 and 91 – Petitioner sought for directing Respondent authorities to release pension-retirement benefits along with 12% interest, hence this petition – Whether, Petitioner entitled for benefit of pension and retirement benefits – *Held*, Petitioner, who was widow and falls within definition of Rules 88 and 91 of Rules, would be entitled to pension and retirement benefits, even if deceased employee-late husband expressed his desire of nominating his son and daughter-in-law as legal heirs, who would be entitled to family pension and retirement benefit – Respondent-authority informed son of Petitioner that she has lodged her claim for pension *vide* communication, however he has not responded to such communications – Respondent-authority not cooperated with authorities nor has he filed any legal proceedings before any forum – Respondent authorities directed to finalize pension case of Petitioner and pay all retirement benefits to her within certain period – Petition allowed. [*Manjulaben Narsinhbhai R. v. Taluka D.O.*]

(A.S. SUPEHIA, J.)
2023-I-LLJ-236 (Guj)
LNIND 2022 GUJ 13

PENSION

Recovery of Excess Payment – Appellant, wife of deceased employee, challenged order of Single Judge directing Respondent-Bank to recover excess payment made to Appellant, hence this appeal – Whether, order of recovery of excess payment made to Appellant, sustainable – *Held*, recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) would be impermissible in law – Whether Court arrives at conclusion, that recovery if made from employee, would be iniquitous or harsh or arbitrary to such extent, as would far outweigh equitable balance of employer's right to recover, then such recovery would be impermissible – Husband of Appellant worked in Grade-III post and that Appellant was suffering from blood cancer, not disputed – Considering situation of Appellant, order of Single Judge, set aside – Respondent-Bank restrained from recovery of excess payment made to Appellant – Appeal allowed. [*Bharti Devi Thakur v. State of Chhattisgarh*]

(ARUP KUMAR GOSWAMI, C.J.)
2023-I-LLJ-197 (Chatt)
LNIND 2022 CHG 3

PRE-EXISTING RIGHT

Maintainability of Petition – Industrial Disputes Act, 1947, Section 33(C)(2) – Petitioner-Company challenged award on ground that Labour Court passed an award without considering pre-existing right which was mandatory for purpose of entertaining a Claim Petition, hence these petitions – Whether, Labour Court *erroneously* entertained claim petition under Section 33(C) of Act – *Held*, entitlement of an employee was pre-requisite condition for purpose of entertaining a Claim Petition under Section 33(C)(2) – If there was any dispute regarding entitlement then an adjudication would be necessary for purpose of ascertaining rights of employees – Separation benefits claimed by employees were to be adjudicated with reference to documents and evidence – There was no proof to establish that said separation benefits were promised by Management at time of accepting resignation – Labour Court proceeded on basis that separation benefits already conferred on employees – Very basis on which Labour Court proceeded was *perverse* – In absence of any such pre-existing right, Claim Petition under Section 33(C)(2) of Act, not maintainable – Claim Petition *erroneously* entertained and findings of Labour Court were not based on any evidence of documents – Award of Labour Court, quashed – Petitions allowed. [*Dodsal enterprises Pvt. Ltd. v. Sampath Kumar*]

(S.M. SUBRAMANIAM, J.)
2023-I-LLJ-27 (Mad)
LNINDORD 2022 MAD 3142

REINSTATEMENT

Disbursal of benefits – Petitioner-employee sought for quashing order of Respondent 2 and 4 and direct Respondents to reinstate him in service with all back wages, continuity of service and other benefits, hence this petition – Whether, Petitioner entitled for reinstatement in service with all back wages, continuity of service and other benefits – *Held*, when Bylaws specifically authorize Board of Management to pass order of dismissal, ratification of dismissal order passed by Managing Director could not be said to be in conformity with Bylaw – Managing Director did not have such authority and confirmation also would have no effect nor could be said that it was in accordance with Special Bylaws – Order of dismissal passed by Respondent 2 and 4, quashed – Respondents 3 and 4 directed to pass appropriate orders to disburse all DCRG and other pensionary benefits, if any, to legal heirs of deceased-Petitioners 2 to 4 – Petition allowed. [*N.P. Palaniswamy v. State of Tamil Nadu*]

(M.S. RAMESH, J.)
2023-I-LLJ-84 (Mad)
LNINDORD 2022 MAD 3699

Employer-Employee Relationship – Respondents-workmen industrial dispute before Labour Court allowed and ordered for reinstatement of workmen with continuity of services and 25% of back wages, hence these petitions – Whether, Respondents were appointed by Petitioner Board in accordance with Service Rules – *Held*, no document to establish that Respondents were appointed by competent authorities of Petitioner Board in accordance with Service Rules – As per statement of Respondents, they were engaged as contract labourers from year 1990 to 2002 – Burden of proof lies on workmen to establish that they were appointed by Board authorities but they were not able to file any document to prove that they were appointed by authorities of Board or directly engaged by Board authorities for execution of scheme related works – Board had executed scheme related works through private contractors who had engaged labourers – Supervision or providing instructions by Board authorities, while executing scheme related works, would not confer any right on workmen to claim that they were controlled by Board's authorities and therefore, they were direct employees of Board – Labour Court misconstrued employer-employee relationship and *erroneously* formed an opinion that such a relationship existed between Petitioner and Respondents – Awards of Labour Court *perverse* and not in consonance with established principles of law, hence, quashed – Petitions allowed. [*MD.TN WS & D Board v. N. Anantharasu*]

(S.M. SUBRAMANIAM, J.)
2023-I-LLJ-18 (Mad)
LNINDORD 2022 MAD 3302

Lumpsum Compensation – Appellant-workman challenged order of Division Bench of High Court setting aside direction of Single Judge to reinstate Appellant and instead awarded lump sum compensation, hence this appeal – Whether, Appellant could be reinstated in service with back wages – *Held*, Appellant workman could not have been made to suffer on account of management's obdurate attempt to have relief set aside – Division Bench's impugned judgment not interfered with factual findings – Direction to substitute relief of reinstatement with one for lump sum payment was not warranted in circumstances of case – No perversity or unreasonableness on part of Labour Court and single Judge in directing Appellant's reinstatement – Denial of back wages, resulted in punishing Appellant, although delay attributable to judicial process – Respondent management could not be absolved of primary responsibility in its litigative proclivity – Impugned judgment, set aside – Appellant should be reinstated in services of Respondent with back wages – Direction of Labour Court and Single Judge for continuity of service, restored – Appeal allowed. [*Jeetubha Khansangji J. v. Kutchh District Panchayat*]

(UDAY UMESH LALIT, C.J.)
2023-I-LLJ-1 (SC)
LNIND 2022 SC 658

TERMINATION

Approval – Industrial Disputes Act, 1947, Section 33(2)(b) – Petitioner-Management application under Section 33(2)(b) of Act before Labour Court seeking approval for terminating service of Respondent-employee dismissed, hence this petition – Whether, impugned order of labour court, legal – *Held*, special pay granted to workman as incentive for family planning was part of his one-month wages for purpose of Section 33(2)(b) of Act – Non-payment of certain sum towards incentive for family planning amounts to violation of mandatory condition of Section 33(2)(b) of Act – Labour Court was right in rejecting application filed by Petitioner under Section 33(2)(b) of Act – Finding of Labour Court based on well settled position of law – No infirmity or perversity in view taken by Labour Court – Impugned order *vide* which Labour Court rejected application filed by Petitioner seeking approval for terminating service of Respondent, upheld – Petition dismissed. [*Delhi Transport Corp. v. Kalu Prasad*]

(GAURANG KANTH, J.)
2023-I-LLJ-33 (Del)
LNIND 2022 DEL 3147

Approval – Industrial Disputes Act, 1947, Sections 17-B and 33(2)(b) – Labour Court by impugned order rejected approval application filed by corporation under Section 33(2)(b) of Act for removing Respondent-workman from service – Workman seeking for direction against corporation for reinstating him back with full back wages and continuity of service with all consequential benefits, hence these

petitions – Whether, Labour Court committed error in not granting approval to corporation for removing workman from service – *Held*, as termination of Respondent-workman was not with intention to victimize him, Labour Court erred in not granting approval to corporation for removing workman from service – Impugned orders, quashed – Relief prayed for by management for approval of action of Corporation in terminating services of workman, granted – While examining Application under Section 33(2)(b) of Act, opinion expressed by Labour Court was of preliminary in nature – Workman was at liberty to challenge his termination order in an appropriate proceeding in accordance with law – Application filed by workman under Section 17-B of Act, allowed and directed corporation to make payment to workman under Section 17-B of Act – Payment already made by corporation to workman under Section 17-B of Act was not recoverable and adjustable – Petition filed by corporation allowed, and that filed by workman dismissed. [*Bikram Singh v. Delhi Transport Corporation*]

(GAURANG KANTH, J.)
2023-I-LLJ-42 (Del)
LNIND 2022 DEL 3087

Contravention of provision – Industrial Disputes Act, 1947, Sections 31,32,33-A and 33(1)(a) – Petitioner sought for directing Respondents 1 and 2 to punish Respondent 3 and their officials for offence committed by them and contravening Section 33 of Act by terminating services of workmen and by altering their status and conditions of service by terminating services of workmen and by altering their status and conditions of service without getting prior permission under Section 33(1)(a) of Act, hence this petition – Whether, Respondent 3 and their officials could be punished for offence of contravening Section 33 of Act by terminating services of workmen – *Held*, in event of violation of any of provisions under Section 33 of Act, then an aggrieved person shall go for an adjudication under Section 33-A of Act and thereafter, penalty clause may be invoked by filing an appropriate complaint before Government, who is Authority to initiate penal proceedings – Section 33-A of Act intended to provide opportunity to employer and workmen to mediate or arrive for settlement or otherwise before approaching Competent Authority under Section 31 of Act, for purpose of punishing violators - In event of violation of any of conditions of service *etc*., under Section 33 of Act, Section 33-A of Act would be applicable – During pendency of impugned conciliation proceedings, complaint was to be submitted in prescribed manner, and even after that, if it was not resolved, then Section 31 of Act, may be invoked – Impugned conciliation proceedings now ended with Government Order – As far as relief sought for was concerned, no further consideration required – Petition disposed of. [*Minjur Paguthi Pothu Thozhilalar Sangam v. Govt of TN*]

(S.M. SUBRAMANIAM, J.)
2023-I-LLJ-87 (Mad)

LNINDORD 2022 MAD 3727

Enquiry – Petitioner management challenged impugned award passed by Labour Court reinstating Respondent-Workman and awarded him continuity of service along with certain sum with 12% interest from date of award till realization, hence this petition – Whether, enquiry proceedings were held by Corporation fair and valid, and order of termination of workman, valid – *Held*, enquiry was held in fair and just manner – There being no other infirmity found by Labour Court, except for fact that Passenger did not confirm that workman admitted his guilt- Workman himself had admitted to having appended his signatures on Passenger's statement – Enquiry proceedings held to be valid and legal – Non-examination of checking staff before Labour Court could not have been held to be detrimental to case of Corporation – Two witnesses forming part of checking staff team deposed before Labour Court – Workman did not deny having appended his signature to Passenger's statement – Misconduct was evidently proved and established – Relief of reinstatement was not tenable and same was set aside – Workman had superannuated – Workman was not entitled to any further retirement benefits, continuity of service, *etc*., - If there was any provident fund or gratuity amount, which was liable to be paid to Workman in terms of impugned order, same should be paid within certain period – Petition allowed. [*DTC v. Shyam Sunder*]

(PRATHIBA M. SINGH, J.)
2023-I-LLJ-49 (Del)

VOLUNTARY RETIREMENT SCHEME

Calculation of Qualifying Years of Service – Petitioner-Trade Union sought for directing Respondents to offer Petitioner members attractive VRS-VSS package, notional pay scale in compliance of Government of India Closure Policy, and quash permission of closure order, hence this petition – Whether, specified period could be included in calculation of qualifying period – *Held*, Retirement Scheme-*ex-gratia* was to be paid to employees of Respondent Company only on basis of actual work done and not on basis of notional or supernumerary work – That period should not be included for purpose of calculating qualifying years of service for Voluntary Retirement Scheme *ex-gratia* – Petition dismissed [*HMT Kamgar Sangh v. Union of India*]

(SANJAYA KUMAR MISHRA, J.)
2023-I-LLJ-205 (Uttar)
LNIND 2022 UTTAR 12

Entitlement to Benefits – On petitions filed by Respondent No. 1-employees, Single Judge held that employees were entitled to 50% *ex-gratia* and daily salary for purpose of calculating Voluntary Retirement Scheme (VRS) dues should be on basis of 26 days a month, hence these appeals – Whether, relevant Department of Public Enterprises (DPE) Guidelines applicable to Respondent No. 1-

employees who have agreed for VRS – *Held*, Single Judge erred in going by Guidelines of 2001 whereas in terms of clarification issued in 2002, calculation of VRS had to be at 30 days a month – Single Judge erred in concluding that Respondent No. 1-employees were drawing State Government pay scales and that 2004 Guidelines would not apply – Once VRS scheme adopted, accepted and payment made, Court would usually not interfere – Impugned judgment of Single Judge, set aside – Appeals allowed. [*C&MD, ITDC v. Sri Rabindranath Sahoo*]

(S. MURALIDHAR, C.J.)
2023-I-LLJ-188 (Ori)
LNIND 2022 ORI 2

FEBRUARY

BENEFITS

Pension – Petitioner sought for directing Respondent 1 and 2 to issue "No Due Certificate" to Respondent 3 and direct Respondent 3 to disburse terminal, pension and other benefits of Petitioner with 18% interest per annum, hence this petition – Whether, Petitioner entitled for "No Due Certificate", terminal pension and other benefits with 18% interest per annum – *Held*, dispute was between Respondents 1 and 2 and Petitioner – Respondent 1 was bound to pay interest for delay period – Respondent 2 issued "No Due Certificate" belatedly – Petitioner was also responsible for delay payment of pensionary benefits, since Petitioner not handed over stock register, stocks of Fine Arts Club at appropriate time – Petitioner committed mistake by not handing over stocks register and other stocks and he was liable to be punished for his mistake – Respondents 1 and 2 have committed mistake by disbursing pension belatedly and they ought to be punished – Mistake of Petitioner could not be set off on Respondent 1 and 2 – Mistake of Respondent 1 and 2 could not be set off on Petitioner – Respondent 1 and 2 should pay 6% interest per annum for delay period – Petitioner should pay certain sum as penalty for not handing over stock register and stocks in time – On payment of certain sum by Petitioner, then Respondent 1 and 2 should pay interest – Petition disposed of. [A. *Lingappan v. G. Venkatasamy Naidu College*]

(S. SRIMATHY, J.)
2023-I-LLJ-349 (Mad)
LNINDORD 2022 BMM 1897

Pension – Petitioner-employee sought implementation of penalty order by paying him all superannuation benefits in form of Pension, Provident Fund, Gratuity, Commutation of Pension and leave encashment *etc*., along with interest, hence this petition – Whether, employee inflicted with punishment of removal from service, entitled to superannuation benefits – *Held*, Bipartite Settlement tends to provide punishment which gives superannuation benefits otherwise due – Such of employees

eligible for superannuation benefit removed from service in terms of clause 6(b) of Bipartite Settlement should be entitled to superannuation benefits – Employee inflicted with punishment of removal from service was entitled to superannuation benefits – Respondent Bank directed to pay all superannuation benefits in form of Pension, Provident Fund, Commutation of Pension and leave encashment to Petitioner – Petition allowed. [*Ashok Wamanrao Bankar v. Union of India*]

(SANDEEP V. MARNE, J.)
2023-I-LLJ-255 (Bom)

CANCELLATION OF CANDIDATURE

Opportunity of Hearing – Petitioners-employee sought for quashing of list issued by Respondent 2 withholding result of selection process, and directing to appoint them on specified posts with all consequential benefits, hence these petitions – Whether, use of scientific methodology used by Institute of Banking Personnel Selection (IBPS), could be basis to hold candidate guilty of having indulged in unfair means, and cancellation of Petitioners' candidature without giving them any opportunity to show cause against allegations of unfair means, sustainable – *Held*, use of statistical methods adopted by IBPS to analyze performance of candidates, could not be said to be impermissible – It was still incumbent upon Respondent no. 2 to put Petitioners to notice and accord opportunity to them to reply to allegations leveled against them by providing them with copies of material based on which it could have been held that they had used unfair means in examination – Respondent 2 given complete go-by to principles of natural justice and merely proceeded to withhold Petitioners' candidature on basis of mere speculation that they had indulged in unfair means – Petitioners justified in complaining about principles of natural justice having been violated and they were having been held to be guilty of indulging in unfair means, without any opportunity of show cause being granted to them – Impugned list quashed with direction to Respondent 2 to forthwith declare results of Petitioners – Petitions allowed. [*Rinku v. Union of India*]

(REKHA PALLI, J.)
2023-I-LLJ-321 (Del)
LNIND 2022 DEL 3465

CHARGE-SHEET AND PENALTY ORDER

Jurisdiction – Bombay Port Trust Employees (Classification, Control and Appeal) Regulations, 1976 – Major Port Trust Act, 1963 – Petitioner-employee challenged charge-sheets, complaining of lack of competence, authority and jurisdiction of Chairman, MPT to issue same, and also order whereby penalty of withholding one increment for period of 3 (three) years without cumulative effect was imposed on Petitioner, hence this petition – Whether, Chairman had competence, authority and jurisdiction to issue charge-sheet and order of penalty – *Held*, Chairman of MPT continues to be disciplinary authority of Petitioner and

exercise of power by Respondent no. 2 as Chairman to initiate disciplinary proceedings against Petitioner did not suffer from any lack of competence, authority and jurisdiction – Chairman, continues to be disciplinary authority to initiate disciplinary proceedings against officer holding post of Chief Law Officer – Chairman had competence, authority and jurisdiction to issue charge-sheet in terms of statutory provisions, *i.e.*, Regulations framed in terms of statutory power conferred by Act – Charge-sheets, and order of penalty were not interfered with, but liberty reserved to Petitioner to question same in appeal that could be carried from such order but in accordance with law – Petition dismissed. [*Suruchi Rajendra Gurjar v. Board of Trustees: Mumbai*]

(DIPANKAR DATTA, C.J. AND ABHAY AHUJA, J.)
2023-I-LLJ-310 (BOM)
LNIND 2022 BOM 588

DISMISSAL

Enquiry – 2nd Respondent-Workmen dismissed from service on charges of misappropriation – On appeal, 1st Respondent-Authority set aside punishment of dismissal, hence this petition – Whether order of 1st Respondent to set aside punishment of dismissal of 2nd Respondent, sustainable – *Held*, 2nd Respondent had not participated in process of Departmental Disciplinary Proceedings and not availed opportunities provided by Management – Enquiry Officer opined that charges were proved based on documents and deposition of witnesses submitted by Petitioner-Management – 2nd Respondent had not adduced any fresh evidence even before 1st Respondent-Authority – In absence of any fresh evidence, 1st Respondent *erroneously* formed opinion that order imposing punishment of dismissal from service was *erroneous* – Such finding was *perverse* and not in consonance with principles – If Authority found that some procedural lapses committed, then denovo enquiry alone was to be considered – Setting aside punishment at outset impermissible and not in accordance with law – Orders passed by 1st Respondent, quashed – Petition allowed. [*Management, Ponni Co-operative Supermarket v. DCL*]

(S.M. SUBRAMANIAM, J.)
2023-I-LLJ-251 (Mad)

EMPLOYMENT

Regularization of Service – Petitioner-employee sought for setting aside action of Respondents in issuing proceedings and not regularized service of Petitioners, as illegal, and to direct Respondent 1 to regularize service of Petitioners, hence this petition – Whether, Petitioners entitled for regularization of their services in accordance to law – *Held*, Respondents could not deny relief of regularization to Petitioners, since as per specified decision one time exercise of regularization had to be done for personnel employed on temporary basis-daily wages *etc*, who have

rendered continuous service for more than 10 years – Respondents could not take services of Petitioners for years together without regularizing their services and indulge in such practice inconsistent with their obligation to function in accordance with constitution – Impugned orders, set aside – Respondents while continuously engaging services of Petitioners directed to consider case of Petitioners for regularization of their services in accordance to law – Petition allowed. [*D. Uppalaiah v. State of Telangana*]

(SUREPALLI NANDA, J.)
2023-I-LLJ-271 (Tel)

Reinstatement with back wages – Respondent 1 court by impugned order interfered with punishment of compulsory retirement with superannuation benefits and substituted it with reinstatement and 30% back wages, hence this petition – Whether, impugned order of reinstatement and 30% back wages, valid – *Held*, certain sum misappropriated by Respondent 2 was temporary misappropriation, for which, he was charge sheeted – Though charges framed against Respondent 2 proved, Respondent 1 Court ordered that Respondent 2 to be reinstated with 30% back wages – During pendency of this writ petition, Respondent 2 passed away, hence question of reinstatement did not arise – Charge leveled against Respondent 2 with regard to misappropriation of money, was only temporary misappropriation of meager amount but, punishment imposed on Respondent 2 for said charge, was too harsh and disappropriate to *delinquency* committed by him – Respondent 1 Court rightly awarded 30% back wages to Respondent 2 and treated denial of remaining 70% of back wages as punishment for misconduct committed by him – No infirmity in award passed by Respondent 1 Court, and same was confirmed – Petition dismissed. [*Indian Overseas Bank v. CGIT cum LC*]

(J. SATHYA NARAYANA PRASAD, J.)
2023-I-LLJ-245 (Mad)

Reinstatement with Full Back-wages – Petitioner's application and review Application before Tribunal dismissed confirming impugned order of Tribunal directing Petitioner to reinstate Respondent no. 1 with full back wages, hence this petition – Whether, direction of Tribunal by which Respondent no. 1 was directed to be reinstated with full back-wages, sustainable – *Held*, charge sheet issued to Respondent no. 1 for unauthorized absence and thereafter immediately she resigned from service – Respondent no. 1 resigned from service as she wanted to avoid departmental inquiry – Request of Respondent no. 1 to take her back in service was to be considered in public interest – Respondent no. 1 wanted transfer to and therefore, avoiding duty – Respondent no. 1 after resignation deposited salary *in lieu* of notice period, reiterated about resignation on more than one occasion in writing and handed over charge – Direction of Tribunal by which Respondent no. 1 was

directed to be reinstated with full back-wages set aside – This was case where Respondent no. 1 submitted detailed complaint alleging sexual harassment against Respondent no.2 – Concerned authorities of Petitioners directed to take appropriate action in accordance with law within certain period – Petition disposed of. [*State of MH v. Smt. Manisha Chandrakant Gosavi*]

(DIPANKAR DATTA, C.J AND MADHAV J. JAMDAR, J)
2023-I-LLJ-290 (Bom)
LNIND 2022 BOM 594

Reinstatement with Full Back-wages – Whether, direction of Tribunal by which Respondent No. 1 was directed to be reinstated with full back-wages, sustainable – *Held*, Respondent no. 1 took conscious decision not to continue her service under State – Complaint of Respondent no. 1 that Respondent no. 2 was sexually harassing her and that was real reason which drove her to tender resignation was not real cause – For last one year of her service, Respondent no. 1 was not under administrative control of Respondent no. 2 – Respondent no. 1 may have tendered resignation without being properly advised – As to whether Respondent no. 1 could be taken back in service without she was entitled to claim any service benefits for period she was out of service, such course of action would not be permissible after relationship between employer-employee had been finally determined. [*State of MH v. Smt. Manisha Chandrakant Gosavi*]

(DIPANKAR DATTA, C.J AND MADHAV J. JAMDAR, J)
2023-I-LLJ-290 (Bom)
LNIND 2022 BOM 594

Termination – Industrial Disputes Act, 1947, Section 17-B – Whether, termination of service of Respondent 2-Workman was illegal or unjustified – *Held*, Respondent 2 was appointed as Peon-cum-Chowkidar against temporary post *vide* appointment letter – Termination letter was not stigmatic – In impugned Award, Labour Court failed to appreciate that performance of Respondent 2 was consistently poor – Even though, Petitioner placed on record all these Memos-show cause notices, Labour Court failed to consider same – Labour Court proceeded on wrong premises that as per Model Standing order, probation could not be for period more than that of 3 months – Labour Court's finding was contrary to evidence on record – Payment already made by Petitioner to Respondent No. 2 under Section 17-B of Act was not recoverable nor adjustable – Impugned Award set aside – Action of Petitioner in terminating service of Respondent 2, upheld. [*BCKP. V. P.O. Industrial Tribunal-III*]

(GAURANG KANTH, J.)
2023-I-LLJ-465 (Del)
LNIND 2022 DEL 3844

Termination – Industrial Disputes Act, 1947, Sections 2(oo) and 25(F) – Appellant's petition before writ Court dismissed holding that Appellant was not workman and termination would not amount to retrenchment, hence this appeal – Whether, Appellant was workman and termination would amount to retrenchment – *Held*, even temporary employee who engaged for hire or reward would be termed as workman unless he falls within exceptions provided in very Section – Any termination of workman which did not fall within exceptions found in Section 2(oo) of Act would amount to retrenchment – Appellant was workman and termination of services would amount to retrenchment – Writ Court was not right in its conclusion that Appellant was not workman and termination would not amount to retrenchment – Once termination would amount to retrenchment without following provisions of Section 25(F) of Act, employee would be entitled to each compensation – Appellant would be entitled to entire minimum wages for period, since he had not worked throughout – It deems fit to award cash compensation of certain sum to be paid by Respondent employer – Appeal partly allowed. [*Thamizhanbane v. Sub Divisional Engineer-in-Charge*]

(R. SUBRAMANIAM, J.)
2023-I-LLJ-358 (Mad)
LNIND 2022 MAD 5486

ENTITLEMENT TO BONUS

Exemption of Educational Institution – Payment of Bonus Act, 1965, Sections 32, (v)(b) – Code on Wages, 2019, Section 41 – Tribunal held that since Respondent-University was profit making Institution and deemed to be University, exemption granted under Section 32(v)(b) of Act, would not apply and therefore, workman who were employed as Drivers and Technicians would be entitled to Bonus, however, Writ court set aside order of Tribunal, hence this appeal – Whether, Act would apply to University which also provided additional facility to students by operating Transport Buses – *Held*, Act was welfare legislation meant for ensuring that workers get share out of profits made by employer – Various exemptions were carved out under Section 32 of Act – Language of Section 32(v)(b) of Act, was explicit and clear to effect that Act should not apply to Educational Institutions and Universities – Code on Wages 2019, enacted by Parliament and assented to by President of India, contains similar exemption clause in Section 41 of Chapter IV of Code, which deals with Payment of Bonus – Parliament even while enacting said Code thought it fit to exempt Educational Institutions and Universities from purview of Payment of Bonus and this would largely establish that intendment remains same as of today – Conclusion of Writ Court, upheld – Appeal dismissed. [*PJVOMTU v. Management, Sathyabama University*]

(R. SUBRAMANIAN, J.)
2023-I-LLJ-366 (Mad)
LNIND 2022 MAD 5495

FINANCIAL LOSS

Liability of Employees – Maharashtra Co-operative Societies Act, 1960, Sections 88 and 152 – Order passed by Authorized Officer indicting Petitioners for causing financial loss to Bank due to non-recovery of outstanding rickshaw loans and housing loans disbursed by Bank and same confirmed by Appellate Authority, hence these petitions – Whether, liability of Petitioners for amounts arrived at for causing financial fraud to Bank could be sustained – *Held*, inherent jurisdictional flaw committed by Respondent No. 2 while conducting inquiry under Section 88 of Act on basis of Panchani Associates Report and application of statutory provision alluded to – Liability of Petitioners for amounts arrived at for causing financial fraud to Bank could not be sustained – Inquiry report/order under Section 88 of Act reiterates loan policy for all Petitioners *verbatim* and was an arithmetical exercise carried out foisting liability on Petitioners without taking any cogent steps against perpetrators of real fraud *i.e.* loan agents who were recipients of rickshaw loan – In case of Housing loan fraud cases, few cases were sub-juice and some were to be filed in Court at time – Appellate Authority while passing identical impugned order in all cases had committed same error without giving finding on principles of inquiry under Section 88 of Act – Inquiry report under Section 88 of Act and all individual orders passed in Appeal under Section 152 of Act and all consequential actions taken thereafter against Petitioners call for interference of this Court as statutory due process of law was not followed – Impugned orders, set aside – Petitions allowed. [*Mahesh Govind K. v. Liquidator, Bhandari Co-op. Bank*]

(MILIND N. JADHAV, J.)
2023-I-LLJ-384 (Bom)

INDUSTRY

Amenable to Application of Act – Industrial Disputes Act, 1947 – Labour Court by impugned award held that services of Respondent 2-workman were terminated illegally, and therefore he was entitled to be reinstated with full back wages with effect from date of termination and continuity of services, hence this petition – Whether, Petitioner Council was industry and amenable to application of Act – *Held*, Petitioner was acting as regulatory body which decides various aspects concerning Indian Medicine – In order to perform duties, there was organizational set up which consists of many employees – There was systematic organized activity with cooperation of Petitioner and its employees – Petitioner was catering service to all medical practitioners, educational institutions, Central Government and public at large whosoever was connected with Indian Medicine – Work performed by Petitioner was not sovereign function of Government of India – Administrative wing of Petitioner performs like any other industrial organization – Petitioner satisfies all

requirements of industry – Petitioner Council was industry and amenable to application of Act – Petition allowed. [*BCKP. v. P.O. Industrial Tribunal-III*]

(GAURANG KANTH, J.)
2023-I-LLJ-465 (Del)
LNIND 2022 DEL 3844

PENSIONARY BENEFITS

Excess Recovery of amount – Petitioner sought for directing Respondents to refund certain amount deducted from his pensionary benefits, hence this petition – Whether, Petitioner entitled for refund of amount deducted from his pensionary benefits – *Held*, recovery of amounts was on account of introduction of GR by Government – This was held to have prospective effect – Undertaking executed by Petitioner would not weigh against him since grant of increment was not accidental – *erroneous* nor had Petitioner played any fraud or had any involvement in wrong pay fixation – Advisory Committee consisting of Judges and other authorities, recommended case of Petitioner for such increment – After introduction of GR, increment stopped and no payment made – Undertaking could not be applied against Petitioner since earlier pay fixation was not fraudulently done nor mistakenly calculated – Petition allowed. [*Manohar Bappaji Gaikwad v. State of Maharashtra*]

(RAVINDRA V. GHUGE, J.)
2023-I-LLJ-461 (Bom)
LNIND 2022 AUG 345

PUNISHMENT

Reduction in penalty – Central Administrative Tribunal (CAT) while confirming findings and punishment of compulsory retirement imposed on Petitioner-employee, reduced period of 10% cut in pension from period of ten years to period of five years, hence these petitions – Whether, order of reduction of punishment of 10% cut in pension from ten years to five years, appropriate – *Held*, punishment imposed by disciplinary authority was not shocking to conscience of Court-Tribunal – Except expressing that punishment was little too harsh, no other reason given how punishment disproportionate to charge – By holding that punishment was little harsh itself shows that CAT, also felt that punishment of 10% cut in pension for ten years did not shock conscience of Court – No cogent and convincing reason given by CAT, while reducing penalty of 10% cut in pension from ten years to five years – CAT exceeded its jurisdiction – Order of reduction of punishment of 10% cut in pension from ten years to five years, set aside – Petition filed by employee, dismissed, and Petition filed by employer, allowed. [*Sharad Kumar Verma v. Central Admin. Tribunal*]

(M.W. CHANDWANI, J.)
2023-I-LLJ-431 (Bom)
LNIND 2022 NGP 271

QUASHING OF CHARGE MEMO

Settlement of Retirement Benefits – Tamil Nadu Civil Services (Discipline and Appeal) Rules, Rule 9A – Petitioner-employee sought for quashing impugned charge memo and to direct Respondents to settle entire retirement benefits payable to him, hence these petitions – Whether, impugned charge memos against Petitioner liable to be quashed – *Held*, intended action against Petitioners based on impugned charge memos could not be proceeded with, in view of several infirmities – Charges against Petitioners, required to be proceeded with by Government alone, in view of proviso to Rule 9A of Rules – Charges arise out of common incident relating to alleged sub-division of Government lands in favour of private individuals, implicating involvement of several officials from departments of Revenue and Survey – Common departmental enquiry required to be conducted by Government and splitting up of enquiry between *delinquents* and conducting separate enquiries, were impermissible – Delay of more than 8 years in framing charges, deemed to be inordinate delay – Impugned charge memos, hit on grounds of laches – When charges against one of co-delinquents pertaining to same statement of allegations as that of Petitioners enquired and held as "not proved", department could not now deviate from such findings and proceed further with same set of charges against Petitioners – Impugned charge memos, quashed – Petitions allowed. [*S. David Thirugnanam v. State of Tamil Nadu*]

(M.S. RAMESH, J.)
2023-I-LLJ-375 (Mad)
LNINDORD 2022 BMM 1175

REFERENCE

Jurisdictional error – Industrial Disputes Act, 1947, Section 10(4) – Minimum Wages Act – Petitioner sought for setting aside award passed by Respondent 1-Industrial Tribunal Court on basis that award passed by Tribunal was contrary to reference made to said court, hence this petition – Whether, impugned award passed by Tribunal, sustainable – *Held*, impugned order suffers from jurisdictional error and Tribunal enlarged scope of dispute referred to it instead of confining its attention to points specifically mentioned in order of reference – In view of fact that reference being limited to narrow question as to whether management justified in treating technicians as assistant Technicians on guise of producing Registration Certificate from Para Medical Board, Tribunal by very terms of its reference had no jurisdiction to inquire into question about applicability of Minimum Wages Act and specific Government Order to employees – Issue which was not raised at time of raising dispute could not have been gone into by Labour Court being not subject matter thereof – Impugned award passed by Tribunal, set aside – Petition allowed. [*Management of BMCH v. Chairman/Industrial Tribunal-II*]

(SUREPALLI NANDA, J.)

2023-I-LLJ-260 (Tel)

STOPPAGE OF INCREMENT

Competence of Collector – Madhya Pradesh Civil Services (Classification Control and Appeal) Rules, 1966, Rule 9 – Petitioner-employee sought for quashing impugned order of Collector imposing punishment of stoppage of increment with cumulative effect, hence this petition – Whether, Collector had jurisdiction to impose punishment of stoppage of increment with cumulative effect on Petitioner – *Held*, stoppage of increment with cumulative effect was in general a major punishment as deferment of increment continuously perpetuate during rest of entire service period of employee and it would adversely affect his terminal benefits like gratuity, pension and others – Collector had jurisdiction to pass order under Rule 9 of Rules and to impose a minor penalty on Class III and Class IV employees of all Departments (except Police Department posted in his District) – Withholding of increment with cumulative effect is major penalty – Collector had no jurisdiction to pass impugned order – Order passed by Collector, quashed and liberty granted to Competent Authority to take up matter in accordance with law – Petition allowed. [*R.D. Pachoriya v. State of Madhya Pradesh*]

(GURPAL SINGH AHLUWALIA, J.)
2023-I-LLJ-339 (MP)
LNINDORD 2022 MP 1

Maintainability of Petition – Constitution of India, 1950, Article 226 – Appellant review application challenging proceedings imposing punishment of stoppage of increment for one year with cumulative effect dismissed confirming order of Single Bench holding that Appellant, who was workman entitled to raise Industrial Dispute, hence this appeal – Whether, Appellant entitled to maintain writ petition under Article 226 of Constitution – *Held*, after dismissal of writ petition filed by way of review – Review was also dismissed without adverting to previous round – Article 226 of Constitution confers power of judicial review wherever there was no alternative remedy available to citizen – Punishment of stoppage of increment for one year with cumulative effect was order affecting Appellant adversely, and affect service conditions of Appellant – Petitioner already exhausted such remedy – Appellant entitled to maintain writ petition under Article 226 of Constitution – In absence of any cogent material to establish charges, order of punishment without considering facts as narrated by Appellant before Disciplinary Authority could not be sustained – Order impugned in writ petition, set aside – Petitioner entitled to monetary benefits – Appeal partly allowed. [*S. Joseph v. Managing Director, TNSTCL*]

(S.S. SUNDAR, J.)
2023-I-LLJ-354 (Mad)
LNIND 2022 BMM 1906

TRANSFER ORDER

Punitive Action – Petitioner-employee challenged impugned transfer order passed by Respondent-Bank, hence this petition – Whether, impugned transfer order issued to Petitioner was vindictive and punitive transfer – *Held*, transfer policy relied upon by Respondent bank was only for period of three years and same got expired, even prior to issuance of impugned transfer policy – Respondent had not placed any modification resolution passed by Board under which, transfer policy extended for further period – Unusual hurry on part of Respondent-bank to transfer Petitioner under impugned transfer order – Transfer made not on account of administrative reason, but only to prevent Petitioner from assisting temporary employees to get relief sought by them before conciliation proceedings – Impugned transfer order issued to Petitioner was vindictive and punitive transfer, hence, quashed – Petition allowed. [*Senthamizh* Selvan. S. v. Senior Manager, PBG Bank*]*

(ABDUL QUDDHOSE, J.)
2023-I-LLJ-345 (Mad)
LNINDORD 2022 MAD 3794

MARCH

DEATH-CUM-RETIRAL BENEFITS

Work-charged Employee – Petitioner sought to direct Respondents to fix and pay Family Pension and Gratuity with interest @ 18% per annum from date of death of husband of Petitioner and to consider case of one of children of deceased employee for appointment on compassionate ground, hence this petition – Whether, work-charged employee entitled to death-cum-retiral benefits – *Held*, husband of Petitioner died while working as Work Charge employee in post of Road Roller Khalasi – Work charged employee entitled to certain benefits – Payment of death-cum-retiral benefits such as pension, gratuity, leave encashment *etc.,* also granted in those cases, where work charged employee were not absorbed in department in spite of specific decisions of State Government and they retired/died as work charged employees only – Impugned order, set-aside – Respondent No. 2 directed to ensure payment of post-death benefits to Petitioner including family pension and gratuity *etc.,* within certain period – Petition allowed. [*Anita Devi v. State of Jharkhand*]

(ANUBHA RAWAT CHOUDHARY, J.)
2023-I-LLJ-588 (Jhar) LNIND 2022 JHAR 599

DISMISSAL

Approval of Board – Uttar Pradesh Cooperative Societies' Employees Service Regulations, 1975, Regulations 84 and 87 – Single Judge set aside order of dismissal of service of Petitioner-Respondent No. 1 and directed for payment of 50%

back-wages, hence this appeal by Management – Whether, order of Single Judge that dismissal of Respondent No. 1 could not be passed by Pradeshik Cooperative Dairy Federation Limited (PCDF)/Appellants without approval of Board, sustainable – *Held*, PCDF was indubitably under purview of Board as regards recruitment, training and disciplinary control of its employees after issue of Notification in 1979 – While Regulations would continue to apply to PCDF, Regulation 87 of Regulations, which mandates prior concurrence of Board before any of specified major penalties, in Regulation 84(i)(e), (f) and (g) of Regulations imposed, would not be applicable to PCDF – PCDF would not at all be required to obtain prior concurrence of Board before imposing any of specified major penalties – Impugned order passed by Single Judge, set aside – Appeal allowed. [*M.D., PCDF v. Virendra Kumar Srivastava*]

(RAJESH BINDAL, C J.)
2023-I-LLJ-598 (All)
LNINDORD 2022 ALL 620

Misconduct – Respondent No.1-Employee's petition before Single Judge allowed directing his reinstatement in service as fresh Conductor, hence this appeal – Whether, Single Judge was justified in interfering with order of removal passed by disciplinary authority and by Labour Court – *Held*, Single Judge did not question the fact that charges leveled against Respondent No. 1 proved – Single Judge proceeded that on basis of proven charges, punishment of removal from service was harsh and disproportionate – As Conductor, Respondent No. 1 did not issue tickets to 13 passengers from whom he had taken fare amounts to misuse of his office which was misconduct – This charge against Respondent No. 1 proved in domestic inquiry, which finding also affirmed by Labour Court – No reason assigned by Single Judge to differ from views taken by disciplinary authority and by Labour Court – Though punishment should always be proportionate to gravity of misconduct, but in case of corruption-misappropriation, *quantum* being immaterial, only punishment of dismissal could be imposed – Single Judge was not justified in interfering with orders passed by disciplinary authority and by Labour Court – Order of Single Judge, set aside – Appeal allowed. [*Depot Manager v. R. Narender*]

(UJJAL BHUYAN, C.J.)
2023-I-LLJ-631 (Tel)
LNIND 2022 TS 3348

EMPLOYMENT

Absorption as Permanent workers – On reference made by Appellants-Union, Tribunal held that members of Appellant-Union were entitled to be absorbed into service of First Respondent with retrospective effect from date of their initial entry into service of Society/Third Respondent with all resultant back-wages and attendant benefits – Single Judge set aside award of Tribunal, hence these appeals – Whether Members of Appellant Union had to be absorbed as permanent workers and whether order of Single Judge, sustainable – *Held*, through reading of order of Single Judge indicates that learned Judge had not given any finding on facts of case

but had only marshaled facts as arrived by Tribunal – Plain reading of terms of reference would implicitly establish that Tribunal had clearly misunderstood terms of "reference", hence, reasoning arrived at by to facts was wholly *perverse* – Reasoning arrived at by Single Judge in reversing award did not suffer from any perversity – As settlement was binding on parties and had not been terminated in manner known to law, reference itself was not maintainable – Impugned order, sustainable and does not call for any interference – Appeals dismissed. [*General Sec. MRWU v. MRL, INDCO SSL*]

(K. KUMARESH BABU, J.)
2023-I-LLJ-675 (Mad)
LNIND 2022 MAD 5753

Regularization of Service – Appellant's petition for regularization of service before writ Court, dismissed, hence this appeal – Whether, Appellants entitled for regularization of their services – *Held*, Appellants appointed in specified years and they were serving even today which showed that work that done by Appellants was of permanent character – Though Appellants originally appointed as Hand Pump Fitting Assistants, they are now being engaged as Overhead Tank Operators – Need for services of Appellants continuous – Though exemption were granted with avowed object of protecting public functionaries and saving public money, such exemptions being used unreasonably to exploit citizens by employing them on daily wage basis – Difference between daily wages that paid to Appellants and what should have been paid to them if they had been permanent employees would be illegal gain made by Government at cost of these Appellants – Order of Writ Court, set aside – Appellants to be regularized with effect from date on which they completed 10 years in service – Appellants would be entitled to monetary benefits – Appeal allowed. [*M. Shanmugam v. Government of Tamil Nadu*]

(R. SUBRAMANIAN, J.)
2023-I-LLJ-696 (Mad)
LNIND 2023 MAD 135

Reinstatement – Industrial Disputes Act, 1947, Sections 2(j), 29 and 32 – Single Judge by impugned order granted reinstatement to workmen with continuity of service and other attendant benefits, but without back-wages, hence these appeals by Management – Whether, award of Single Judge, legal – *Held*, workmen discharged their initial burden stating that they have been engaged and paid wages on daily basis and their names found in Muster Roll – Burden shifted on Management to disprove statement – That apart, Management not raised *plea* as to whether Appellant Management was as 'industry' or not, either before lower forum or before Single Judge – It was factual *plea*, which had to be proved by means of evidence on reason that it came within exceptional category of Section 2(j) of Act defined as on date and not based on amended provisions, which had not come into force – Back-wages up to date of judgment, deprived of by Single Judge without any reason, however, same not questioned by Workmen – Award of Labour Court, as

modified by Single Judge, got to be implemented within three months from date of this judgment – If same not implemented, it was open for Workmen to make complaint under Section 29 of Act for prosecuting officials in terms of Section 32 of Act – Management bound to implement award – Appeals dismissed. [*Management of Highways v. T. Saravanan*]

(S. VAIDYANATHAN, J.)
2023-I-LLJ-685 (Mad)
LNIND 2023 MAD 171

FAMILY PENSION

Adopted son – Central Civil Services (Pension) Rules, 1972, Rule 54 – Respondents rejected Appellant's claim for family pension on ground that children adopted by widow of government servant, after death of government servant, would not be entitled to receive family pension as per Rule 54(14)(b) – On challenge thereto, Tribunal directed Respondents to consider Appellant's claim, but High Court reversed judgment and order of Tribunal, hence this appeal – Whether child adopted by widow of government servant, subsequent to death of government servant would be included within scope of definition of 'family' under Rule 54(14)(b) and would therefore be entitled to receive family pension payable under Rules – *Held*, Rule 54(14)(b) defines 'family' for purpose of Rule 54 – In Rule 54(14)(b) phrase "in relation to government servant" indicate that categories of persons listed thereunder were sought to be brought into association with deceased government servant – Context requires that association or connection of such persons with deceased government servant must be direct and not remote – Family member must have close nexus with deceased government servant and must have been dependent on him during his lifetime – Son or daughter adopted by widow of deceased government servant, after death of government servant, could not be included within definition of 'family' under Rule 54(14)(b) – Family pension devised as means to help dependents of deceased government servant tide over crisis and to extend to them some succor – Heirs listed under Rule 54(14)(b) were immediate dependents of deceased government servant – Persons who were not dependent on government servant prior to his death could not be held to be included in definition of 'family' under Rule 54(14)(b) – Judgment of High Court, affirmed – Appeal dismissed. [*Shri Ram Shridhar Chimurkar v. Union of India*]

(B.V. NAGARATHNA, J.)
2023-I-LLJ-526 (SC)
LNIND 2023 SC 8

PAYMENT OF GRATUITY

Gramin Dak Sewaks – Payment of Gratuity Act, 1972, Sections 1, 2 and 4 – Gramin Dak Sewak (Conduct and Engagement) Rules, 2001 – Gramin Dak Sewak (Conduct

and Engagement) Rules, 2011 – First batch of employees were Gramin Dak Sewaks who retired after Rules 2011 came into force – Second batch retired prior to date when Rules 2011 came into force – Controlling authority allowed claims of employees holding that all employees were entitled to gratuity as they were covered by Act, hence these appeals – Whether Postal Department was establishment under Act – Whether Gramin Dak Sewak was "employee" as per Section 2(e) and entitled to payment of gratuity under Act – *Held*, Post and Telegraphs Department would be establishment under Act, as Postal Department was establishment under, Section 2(k) of Indian Post Office Act – Section 1(3)(b) applies to every 'establishment' within meaning of 'any law' for time being in force and Indian Post Office Act would fall under expression 'law' under Section 1(3)(b) – Act excluded persons who held post with Central or State Government and governed by any other Act or rules providing for payment of gratuity – Since Rules 2011 had separate provision for payment of gratuity to Extra Departmental Agents, Gramin Dak Sewak was not "employee" under Act – Those employees whose cases are covered by Rules 2011, namely, whose service ended after the Rules came into force, were not entitled to payment of gratuity under Act but entitled for payment of gratuity under Rules 2011 – With respect to cases covered under Rules 2001, there was no provision for gratuity under said Rules – Although there were office memorandums issued to enable payment of gratuity to employee – Applicability of Section 4(5) would come in only if two options were available to employees to claim gratuity as of right – In instant case there was only one option *i.e.,* to get gratuity under Act – Petitions of employees who retired prior to coming into force of Rules 2011, had to succeed and those orders of controlling authority under Act upheld – First batch of cases, allowed – Second batch of cases, dismissed. [*Senior Superintendent of P.O. v. R.L.C. and C.A.*]

(C.P. MOHAMMED NIAS, J.)
2023-I-LLJ-538 (Ker)
LNIND 2022 KER 5

PENSIONARY BENEFITS

Date of Regularization – Petitioner sought for quashing impugned order passed by 4th Respondent and to direct Respondents to disburse his retirement benefits taking into consideration date of regularization with all consequential benefits including interest on delayed retirement benefits, hence this petition – Whether, Petitioner entitled for retirement benefits including interest on delayed retirement benefits taking into consideration date of regularization – *Held*, 5th Respondent had not followed proper recruitment process while appointing Petitioner, but in order to meet out exigency circumstances, had appointed Petitioner – Petitioner retired on attaining age of superannuation – 5th Respondent had regularized Petitioner and brought under time scale of pay from year 2001 – 5th Respondent ought to have placed proposal before 1st Respondent to regularize service of Petitioner – Failures of Respondents could not put Petitioner in

disadvantageous position – Petitioner had rendered service from year 2000 onwards and he should gain under principles of legitimate explanation – 1st Respondent directed to pass necessary orders of ratification/regularization from date of appointment by granting exemption, if any rule violated – All consequential monetary benefits, pensionary benefits and other benefits to be granted to Petitioner – Petition allowed. [*P. Nataraj v. State of Tamil Nadu*]

(S. SRIMATHY, J.)
2023-I-LLJ-593 (Mad)
LNINDORD 2022 BMM 1975

REINSTATEMENT

Full Wages – Industrial Disputes Act, 1947, Sections 17B and 33-C(2) – Respondent-bank petition before High Court allowed setting aside order passed by Tribunal in application under Section 33-C(2) of Act awarding wages for specified period, hence this appeal – Whether, Appellant-employee should be entitled to full wages from date of award of reinstatement passed by CGIT to actual date of reinstatement – *Held*, order of award of reinstatement confirmed by Division Bench of High Court – Order of reinstatement would rely on back to original order passed by Labour Court – Because reinstatement order was under challenge and there was stay of order of reinstatement during pendency of proceedings before High Court, it could not be ground to deny wages to employee when order of reinstatement came to be confirmed and attained finality – Whether held to be entitled to pay Appellant as wages from order of award of reinstatement till actual reinstatement under Section 17B of Act, same was to be deducted and adjusted – Order of reinstatement and wages claimed on order of reinstatement were already adjudicated upon – Impugned judgment passed by Division Bench of High Court, set aside – Appellant should be entitled to full wages with all emoluments from date of order of reinstatement to date of actual reinstatement – Appeal allowed. [*D.N. Krishnappa v. Deputy General Manager, Allahabad Bank*]

(M.R. SHAH, J.)
2023-I-LLJ-500 (SC)
LNIND 2022 SC 735

Illegal gratification – Labour Court declared order imposing penalty of dismissal on Respondent as illegal and directed to reinstate Respondent in service along with full back wages and continuity of service – Industrial court confirmed order of Labour Court, hence this petition – Whether, order directing reinstatement of Respondent, sustainable – *Held*, Respondent faced serious charge of demand and acceptance of illegal gratification – Evidence of complainant was sufficient to prove first element of charge of demand of illegal gratification – Second element of acceptance of illegal gratification proved on touchstone of preponderance of probability – Respondent demanded illegal gratification and accepted same and testimony of Complainant remained unshattered in cross-examination – Labour Court

and Industrial Court erred in permitting technicalities to take precedence over purpose for which domestic inquiry was conducted – Reasonings of Labour Court that corroborative evidence was not led and criminal case remained pending were seriously flawed – Labour Court and Industrial Court seriously flawed in setting aside order of dismissal despite availability of sufficient evidence in support of first element of charge of demand of illegal gratification and some evidence to prove second element of acceptance of illegal gratification – Orders passed by Industrial Court and Labour Court, set aside – Petition allowed. [*Divisional Controller, MSRTC v. Ravindra Adhar Gosavi*]

(SANDEEP V. MARNE, J.)
2023-I-LLJ-572 (Bom)
LNIND 2022 AUG 355

REMOVAL FROM SERVICE

Violation of principles of natural justice – Respondent-employee's petition before Single Judge challenging order of punishment of removal from service allowed, hence this appeal – Whether, Single Judge justified in setting aside order of punishment of removal from service – *Held*, Petitioner-employee was denied all reasonable opportunities to prove his innocence – No proof as to how Proforma went missing and there was no pleading as to how it went missing – No reference to any report mentioned in reference column and no such document produced – Very Charge Memorandum was not an independent proceeding of earliest charge and was offshoot or concomitant charge – Orders of punishment and orders of Appellate Authority required to be interfered – Apart from perversity and violation of principles of natural justice, charge itself was repeat attempt in different context and it suffers from unexplained delay – Order of Single Judge modified to certain extent while upholding rest of order – Appeal partly allowed. [*Chief Manager, NLCL v. A. Subramanian*]

(D. BHARATHA CHAKRAVARTHY, J.)
2023-I-LLJ-647 (Mad)
LNIND 2022 MAD 4881

TERMINATION

Approval – Rajasthan Non-Governmental Educational Institutions Act, 1989, Section 18 – Division Bench of High Court upheld order of termination of appellant setting aside orders of Tribunal and Single Judge holding that after disciplinary enquiry/proceedings prior approval of Director of Education was not required, hence this appeal – Whether prior approval of Director of Education had to be obtained even in case of termination/removal of employee of recognized institution after holding departmental enquiry/proceedings – *Held*, in case of termination of

employee of recognized institution prior approval of Director of Education or officer authorised by him in this behalf had to be obtained – In Section 18, there was no distinction between termination, removal, or reduction in rank after disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry – Provisions of statute to be read as they are – Nothing to be added and/or taken away – Words used were "no employee of recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of Director of Education had been obtained" – First part of Section 18 to be read along with first *proviso* – One true interpretation of Section 18, held that even in case of termination/removal of employee of recognized institution after holding departmental enquiry/proceedings prior approval of Director of Education had to be obtained as per first *proviso* to Section 18 – Judgment and order passed by Division Bench of High Court restoring order of termination which was without obtaining prior approval of Director of Education, set aside – Appellant to be reinstated in service – Appeal allowed. [*Gajanand Sharma v. Adarsh Siksha Parisad*]

(M.R. SHAH, J.)
2023-I-LLJ-663 (SC)
LNIND 2023 SC 43

TRANSFER

Master and Servant Relationship – Bihar Panchayati Raj Act – Tribunal by impugned order extended relief sought by Respondent insofar as his transfer with reference to his spouse who is working as Panchayat Teacher, hence this petition – Whether Respondent's spouse who was staff of Zilla Parishad could be treated as staff of State Government – *Held*, Tribunal committed error in extending relief sought by Respondent insofar as transfer of Respondent with reference to his spouse who is working as Panchayat Teacher – Tribunal failed to appreciate whether Panchayat Teacher had nexus or master and servant relationship with State government or not – Perusal of Act and its provision made it clear that staff of Gram Panchayat and other local bodies have no nexus with State government except State government providing funds and overall supervision in respect of financial and other deputed officials to Zilla Parishad-Gram Panchayat *etc.* – Order of Tribunal set aside while affirming order of transfer of Respondent. [*Navodaya vidyalaya Samiti v. Dr. Sanjay Kumar*]

(P.B. BAJANTHRI, J.)
2023-I-LLJ-672 (Pat)
LNIND 2023 PAT 65

APRIL

ACCIDENTAL DEATH

Compensation – Petitioner challenged order passed by Respondent 3 and 4 rejecting his claim of certain sum on account of death of her mother while performing Covid-19 duties, hence this petition – Whether, Petitioner entitled for certain sum on account of death of her mother while performing Covid-19 duties – *Held*, requirements of documents to be furnished in respect of accidental death of employee was only procedural in nature – Same could not be said to override fundamental purpose of grant of relief to Covid-19 workers and their family members – Deceased employee died by her accidental fall while performing Covid-19 duties and on account of its complications, she died within 24 days of suffering said injury on her leg – Deceased fall on ground was not on account of any negligence on part of any person – Denial of claim of certain sum to Petitioner whose mother had died while performing her Covid-19 duties was unjust and calls for interference – Impugned orders, quashed – Respondents directed to pay certain sum as promised in "Mukhyamantri Covid-19 Yodha Kalyan Yojana" within certain period – Petition allowed. [*Laxmi v. State of Madhya Pradesh*]

(SUBODH ABHYANKAR, J.)
2023-II-LLJ-22 (MP)

APPOINTMENT OF AD HOC PRINCIPAL IN-CHARGE

Jurisdiction of University – Petitioner challenged order passed by University directing to appoint Respondent as Principal In-charge and directed Principal In-charge to take steps of formation of governing body, hence this petition – Whether, University had power to appoint *Ad hoc* Principal In-charge – *Held*, University had power to appoint *Ad hoc* Principal In-charge till Principal was appointed – Order of appointing 5th Respondent as Principal In-charge, found to be justified and legal – Allegations leveled by Petitioner with regard to 5th Respondent being hand-in-glove with University was also found to be far-fetched and wishful thinking of Petitioner – Petitioner unable to prove any such allegation – While 5th Respondent acquired PhD degree and was also selected through Commission and working on post since long, junior-most person who was appointed and was much junior to 5th Respondent could not claim posting as Principal In-charge – Order passed by University, justified – 5th Respondent should be allowed to continue on post of Principal In-charge and act in accordance with laws – Petition dismissed. [*Dr. Nagendra Kumar Pandey v. Chancellor of the University*]

(SANJEEV PRAKASH, J.)
2023-II-LLJ-51 (Pat)
LNIND 2023 PAT 64

APPOINTMENT

National and Monetary Benefits – Petitioner-employee sought for appointment on post of Teacher Grade-III (General Education) (Level-II) in subject

English *qua* recruitment process initiated *vide* advertisement, hence this petition – Whether, Petitioner deserves to be appointed on post of Teacher Grade-III (General Education) (Level-II) – *Held*, Karate sport and Karate Association of India was association recognized by Ministry of Youth Affairs and Sports – Notification could not be held applicable to present recruitment which pertains to specified years – No order of rejection of candidature of Petitioner on said ground by Respondent-Department and ground raised for first time in reply to writ petition – Petitioner's name found place in final select list which was issued after verification of documents – Ground as raised by Respondents could not be held to be tenable – Petitioner did fall in "outstanding sportsperson" category and deserves to be appointed in pursuance to his selection *vide* final select list – Respondents directed to grant appointment to Petitioner on post of Teacher Grade-III (General Education) (Level-II) in subject English – Petitioner would be entitled to all consequential benefits, notional benefits and monetary benefits subsequent to his appointment – Petition allowed. [*Madan Lal Mitharwal v. State of Rajasthan*]

(MS. REKHA BORANA, J.)
2023-II-LLJ-26 (Raj)

CLOSURE OF MILLS

Compliance of Provision – Industrial Disputes Act, 1947, Sections 2-A, 25(F) and 25(FF) – Petitioner sought for quashing impugned notice issued by Respondent no. 5 with regard to closure of Mills, and also sought direction to Respondents to take appropriate steps to make Respondent no. 5 Mill operative, hence this petition – Whether, deeming provision could be read in isolation, when Authorities have not discharged their statutory obligation mentioned therein – *Held*, no hearing conducted and no reference made – When Authorities fail to discharge their duties, it was obligatory on the part of Government to refer matter for adjudication before appropriate Tribunal – Purpose of deeming provision provided under Act was for different aspect and not for sending communication about receipt of application by Government and hearing thereafter – Workmen deprived of their employment, they were entitled to question non-employment, on account of illegal closure individually by raising dispute under Section 2-A of Act, which was maintainable – Section 25(F), 25(FF) of Act and the like have also not complied with and therefore, Workmen should be construed to be in employment – Labour Court would have to look into doctrine of approbation and reprobation and in case employee accepted any amount under protest, then he is entitled to agitate his grievance before appropriate Forum – Demand raised by Petitioners valid – Impugned notice, set aside – Petitions allowed. [*SPTUPS v. Secretary, Industries and Commerce*]

(S. VAIDYANATHAN, J.)
2023-II-LLJ-35 (Mad)

COMPASSIONATE APPOINTMENT

Absence of Policy – 1st Respondent filed writ petition seeking appointment on compassionate grounds – Single Judge dismissed writ petitions – On appeals, Division Bench of High Court reversed order of Single Judge and directed Municipalities to consider application made by Petitioners seeking appointment on compassionate grounds, hence these appeals – Whether, Division Bench of High Court erred in allowing appeals filed by Respondents and directing that their claims for compassionate appointment be considered by Appellant – *Held*, Respondents upon submitting their applications, did nothing further to pursue matter, till for period of ten years – Order of High Court whereby writ petition filed by some Respondents was disposed of with direction to Director of Local Bodies, to take decisions as to appointment of Respondents, could not be considered to have effect of revival of cause of action – Applications were filed in specific year therefore, they would have to be decided in light of particular Circular, however, said Circular did not govern compassionate appointment to posts under local authorities – There was no policy existing to govern compassionate appointment to posts under local authorities in State – In absence of such policy, compassionate appointment could not be granted – Impugned judgment of High Court set aside and that of passed by Single Judge, restored – Appeals allowed. [*State of West Bengal v. Debabrata Tiwari*]

(B.V. NAGARATHNA, J.)
2023-II-LLJ-209 (SC)LNIND 2023 SC 147

Entitlement to Brother – Education Officer declined to grant approval to Petitioner's appointment on compassionate ground, in view of Policy set out in Government Resolutions, hence this petition – Whether, Petitioner's claim for compassionate appointment on death of his married brother, survived by widow and minor son, was admissible, and exclusion of brother of married deceased-employee for compassionate appointment, had rational nexus with purpose and object, under scheme of compassionate appointment – *Held*, Petitioner was unemployed and wholly depending on deceased brother, but that itself would not entitle him to claim employment on compassionate ground, as matter of right – Reason being, Petitioner brother left behind wife and minor son, which constitutes his family and none else – Petitioner was appointed in specified year on premise that wife of deceased had given her no objection and his appointment continued over a period of 10 years – Though approval to his appointment was sought, but not granted by Education Officer – Petitioner was looking after family of deceased, Education Officer directed to grant approval to Petitioner's appointment, as special case – Petition allowed. [*Vinod v. State of Maharashtra*]

(SANDEEP K. SHINDE, J.)
2023-II-LLJ-30 (Bom)

Rejection of claim – Petitioner after attaining age of majority, made application for compassionate appointment, however, his claim was rejected by 2nd Respondent on ground that Petitioner had not applied within 3 years from date of his father's death, hence this petition – Whether, Petitioner's claim for compassionate appointment could be considered – *Held*, Petitioner's mother who was blind, approached Respondents after death of her husband and only due to lack of vision, her request was rejected – Steps were taken by Petitioner's mother diligently in pursuing her claim for compassionate appointment over death of her husband – In such circumstances, when Petitioner's mother being widow and since she had no other source of livelihood, Respondents should have been much more sympathetic and practical in considering her claim for compassionate appointment to her son – Petitioner's claim for compassionate appointment could not be denied, but same had to be considered in sympathetic and practical way – Order of 2nd Respondent, quashed – 1st and 2nd Respondents directed to consider Petitioner's application for compassionate appointment on merits – Petition allowed. [*G. Vinoth Kumar v. Director of MRHSFW*]

(J. NISHA BANU, J.)
2023-II-LLJ-81 (Mad)LNINDORD 2023 MAD 95

COMPULSORY RETIREMENT

Disciplinary Proceedings – Appellant-employee challenged final order of compulsory retirement issued against him and subsequent order passed by Representation Committee declining to interfere in order of compulsory retirement – Tribunal dismissed said petition and same confirmed by High Court, hence this appeal – Whether, order of compulsory retirement passed by Respondents in respect of Appellant was based on valid material and in public interest – *Held*, Appellant's service record being impeccable could not have been factor that went against him for Respondents to have compulsorily retired him – Respondents did not take disciplinary proceedings initiated against Appellant to its logical conclusion and instead issued order compulsorily retiring him – Matrimonial dispute between Appellant and his wife stood closed on decree of divorce being granted on basis of mutual consent – Respondents were also cognizant of said fact, that said allegations leveled by wife had not been established – However, disciplinary proceedings initiated against Appellant were abandoned by Respondents on order of compulsory retirement – Though Appellant had leveled allegations of institutional bias and prejudice against Respondents, said officer was not joined by Appellant as party before Tribunal or High Court, for him to have had an opportunity to clarify his stand by filing counter affidavit – Order passed by Respondents compulsorily retiring Appellant, set aside – Appeal allowed. [*Captain Pramod Kumar Bajaj v. Union of India*]

(HIMA KOHLI, J.)
2023-II-LLJ-1 (SC) LNIND 2023 SC 154

DISMISSAL

Bogus Certificate – Tamil Nadu Civil Services (Discipline and Appeal) Rules, Rule 17(b) – Petitioner was dismissed from services as Secretary of State Schools Examination Board, in his report had stated that S.S.L.C. certificate produced by Petitioner was bogus and same confirmed on appeal, hence this petition – Whether, dismissal of Petitioner from service, sustainable and whether Petitioner could be reinstated in service, together with all consequential service and monetary benefits – *Held*, very charge based on letter of Secretary of State Schools Examination Board – Though Secretary opined that document was bogus, he had not returned bogus mark statement and retained same in their office itself – Original mark statement bearing Registration was also not produced before Enquiry Officer – When entire case revolved around letter of Secretary, there was duty cast on Respondents to substantiate that letter by proving its content thereon through proper witness – In absence of same, procedure adopted by Respondents would be opposed to principle underlying Rule 17(b) of Rules – Consequential punishment and order-in-appeal, could not be sustained – Enquiry proceedings stand vitiated – Impugned orders, quashed – 1st Respondent directed to reinstate Petitioner back into service, together with continuity of service – Petition allowed. [*S. Radhakrishnan v. District Collector*]

(M.S. RAMESH, J.)
2023-II-LLJ-86 (Mad) LNINDORD 2023 MAD 94

Enquiry – Petitioner-employee sought for quashing impugned order of dismissal passed by Respondent, hence this petition – Whether, impugned order of dismissal, legal – *Held*, both charges were identically *verbatim* – Respondents had not assigned any valid reason in their second Charge Memo as to why they discarded earlier Charge Memo and proceeded to issue second one – Issuance of Second Charge Memo without dropping first Charge Memo or assigning any valid and acceptable reason in second Charge Memo for ignoring first Charge Memo could not be sustained – Though report of Tahsildar and request of Petitioner, did not form part of inquiry report, such reports and representations may have persuasive value, co-jointly considered along with procedural irregularities adopted during course of inquiry itself in gross violation of procedure to be adopted during course of departmental inquiry – Petitioner was not in employment from date of his dismissal, ends of justice could be secured if arrears of salary from date of dismissal till date of his superannuation, withheld – Impugned order, quashed – Respondents directed to pass orders, to effect that Petitioner continued in his service and notionally retire him from services, attaining his age of superannuation, by extending continuity of service and all other service benefits – Petition allowed. [*Balagovinda Rao v. Chief Engineer*]

(M.S. RAMESH, J.)
2023-II-LLJ-91 (Mad) LNINDORD 2023 MAD 105

Entitlement to back wages – Appellant, who was working as Clerk with Respondent Bank was charged with various delinquencies, dismissed from services – Appellant's petition before Write Court disposed of directing that Appellant would not be entitled to back wages while setting aside order of dismissal and imposing penalty-punishment of reduction of basic pay in five stages with cumulative effect, hence this appeal – Whether, Appellant would be entitled to full back wages during period of his service – *Held*, Appellant reached age of superannuation just three months after order made in writ petition – Writ Court found that termination was illegal – Once termination was held to be illegal, consequence of such conclusion should follow – It would be open to Court or Tribunal to deny back wages, but same should be on sound reasoning – Writ Court had not assigned any reasons for denying back wages to Appellant – It should be shown that Appellant was not gainfully employed during period of enforced idleness or that Management was in very bad financial condition – Neither of two grounds exist in case of Appellant – Punishment imposed by writ Court *viz*., reduction in basic wages by five stages with cumulative effect, upheld – Direction denying back wages alone set aside – Appellant would be entitled to full back wages during period of his service – Appeal allowed. [*R. Govindarajan v. Indian Overseas Bank*]

(R. SUBRAMANIAN, J.)
2023-II-LLJ-190 (Mad)
LNIND 2023 MAD 371

PENSIONARY BENEFITS

Entitlement – Respondent appointed as Associate Professor challenged action of Appellant applying new pension scheme to him – Tribunal held that action of Appellant of applying new pension scheme was illegal and direction was issued to Appellant to consider case of 1st Respondent under old pension scheme – High Court confirmed order of Tribunal, hence this appeal – Whether, 1st Respondent entitled to pensionary benefits – *Held*, employment of 1st Respondent was regularized by office order date May 2012 which specifically records that order would take effect from date of issue of order – Said condition had not been challenged by 1st Respondent therefore, he could not claim that his employment had been regularized with retrospective effect, when he was appointed on contract basis as Associate Professor – Tribunal and High Court, have proceeded on *erroneous* basis that after regularization, 1st Respondent was entitled to charge his option from CPF to old pension scheme in terms of Bye-law 52 – High Court *erroneously* observed that regularization would relate back to date of initial appointment in 2002 when order of regularization expressly states that regularization would operate from date of order dated May 2012 – Bye-law 52(a)(4) of Bye-laws, would not apply to employee whose service had been regularized under Regularization Rules – In view of provisions of Regularization Rules, there was no question of making available such

an option – Impugned orders of Tribunal and Division Bench of High Court, set aside – Appeal allowed. [*NIRD v. Shyam Sunder Prasad Sharma*]

(ABHAY S. OKA, J.)
2023-II-LLJ-183 (SC)
LNINDU 2023 SC 22

PUNISHMENT OF REMOVAL

Approval – Industrial Disputes Act, 1947, Section 33(2)(b) – 2nd Respondent-workman imposed with punishment of removal from service for unauthorized absence – Approval Petition filed before 1st Respondent under Section 33(2)(b) of Act, dismissed, hence this petition – Whether order of 1st Respondent dismissing Approval petition, sustainable – *Held*, competent authority examined findings of Enquiry Officer and formed opinion that there was no *prima facie* case, however, no reasons were given to form such final opinion – Whenever Approval Petition was filed under Section 33(2)(b) of Act, Authorities were bound to consider documents and also give reasonings for conclusion – Reasons were not given by examining all relevant records – Delay in filing Approval Petition was very meager and same was to be condoned and on such technical ground, misconducts could not be condoned or persons, who committed such misconducts could be exonerated – Certain procedural defects not affecting merits of case could not stand in way of deciding issues on merits – Case remanded back for purpose of deciding issues on merits and in accordance with law – Order passed by 1st Respondent, quashed and matter remanded back to 1st Respondent for fresh adjudication – Petition allowed. [*Management of MTCL v. Special DC of Labour*]

(S.M. SUBRAMANIAM, J.)
2023-II-LLJ-114 (Mad)
LLNINDORD 2022 MAD 2734

REINSTATEMENT WITH BACK WAGES

Unauthorized Absence – Industrial Disputes Act, 1947, Section 25(F) – 1st Respondent-employee without any notice absented himself from service and left service voluntarily – 1st Respondent raised Industrial Dispute – Labour Court directed reinstatement of 1st Respondent with continuity of service and 50% back wages, hence this petition – Whether, award passed by Labour Court, justified – *Held*, Petitioner-management could not produce any document to show that 1st Respondent stopped attending work on his own – 1st Respondent did not raise issue nor issued any notice for more than four years would amply show that he was not terminated from service and when Petitioner comes forward with wrongful termination, it is always opens to him to lead proper oral evidence to prove his case that he was prevented from attending work – Tribunal has also found that management had not applied Section 25(F) of Act – This was not case of retrenchment and therefore, referring to Section 25(F) of Act would show that

Labour Court had not applied its mind as to real issue to which, parties were in dispute – Because, Petitioner-management unable to produce any document or evidence to prove that 1st Respondent was gainfully employed in some other management-company, Petitioner could not be saddled with liability to reinstate 1st Respondent with back wages – Award passed by Labour Court, set aside – Petition allowed. [*Management, KMPI v. B. Parthasarathy*]

(S.S. SUNDAR, J.)
2023-II-LLJ-196 (Mad)
LNINDORD 2023 MAD 375

REINSTATEMENT

Non-working period – Chennai Port Trust (Pay and Allowances *etc*) Regulations, 2001, Rule 41(4) – Respondents passed order reinstating Petitioner and declaring non-working period as *dies non*, due to which Petitioner would not be entitled to get any monetary or financial benefits like back wages, hence this petition – Whether order of Respondents declaring non-working period as *dies non*, justified – *Held*, Petitioner dismissed from service pursuant to conviction and subsequently reinstated because of acquittal obtained from appellate Court – This case would fall under sub-rule (4) and Petitioner who got reinstatement would not be entitled for full back wages, but eligible to get pay and allowances not being whole and same shall be decided and paid to such persons – Competent authority by using his discretion only should have decided proportionate pay and allowances payable to Petitioner during non-working period, instead, Competent authority had declared entire non-working period as *dies non*, denying entire back wages to Petitioner – Impugned order not in consonance or in tune with Rule 41(4) – Petitioner had already suffered with punishment through disciplinary proceedings – Present condition declaring non-working period as *dies non* thereby denying entire back wages to Petitioner would amount to double jeopardy – Impugned condition of order of 1st Respondent and 2nd Respondent/Appellate authority's order declaring non-working period of Petitioner as dies non, set aside – Petitioner would be entitled to get proportionate pay and allowances for said period – Petition disposed of. [*N. Antony v. Chennai Port Trust*]

(R. SURESH KUMAR, J.)
2023-II-LLJ-133 (Mad)
LNINDORD 2022 MAD 3927

REMOVAL FROM SERVICE

Educational qualification – Petitioner, who was serving as Territory Coordinator in Respondent Corporation was removed from service by impugned order, hence this petition – Whether order of removal from service liable to be set aside – *Held*, Respondents confirmed that mark statements of 7th and 8th semesters were verified by interview committee – They had failed to verify whether Petitioner had cleared 7th semester in first time or not – All

these grounds were now incorporated in show cause notice and final orders removing Petitioner from service was passed, after completion of twenty years of service in Corporation – Petitioner was promoted twice based upon his performance and there was no remark in services in past twenty years – Respondent Corporation, which was not particular about specific Clause of appointment at time of appointment of Petitioner, after confirming services of Petitioner, now after completion of twenty years of service could not take stand that he was not having basic educational qualification, which had not been prescribed in selection list – Petitioner could not be found fault on these material facts – Condition in appointment order appears to be not relevant condition at time of appointment of Petitioner – Impugned order, set aside – Petition allowed. [*Dax Mohan v. BPCL*]

(B. PUGALENDHI, J.)
2023-II-LLJ-56 (Mad)
LNINDORD 2023 BMM 52

Principles of natural justice – Petitioner, who worked as Over Head Tank Operator was removed from service by 1st Respondent, hence this petition – Whether order of removal from service liable to be set aside – *Held*, period of absence in notice and in impugned order was different – Notice did not call for Petitioner's objections on some contemplated action, but rather states that, if Petitioner did not turn up to office and receive keys pertaining to tank, he would be removed from service – No opportunity extended in this notice for Petitioner to render his explanation – When 1st Respondent himself admits that Petitioner was employed for past twenty two years, terminating him from service, without proper show cause notice or giving opportunity to him by way of enquiry, was against principles of natural justice – On ground of violation of principles of natural justice, impugned order of removal from service could not be sustained – No documents filed to substantiate that 1st Respondent Board had passed resolution for removing Petitioner from service – On this ground also, impugned order could not be sustained – Impugned order passed by 1st Respondent, quashed – Petition allowed. [*V.S. Sivaji v. K. Samy*]

(M.S. RAMESH, J.)
2023-II-LLJ-171 (Mad)
LNINDORD 2023 MAD 606

ROLL BACK AGE OF RETIREMENT

Interpretation of Clause – Board of Directors of Appellant company proposed to roll back age of retirement from 60 to 58 years – Respondents petition before Single Judge partly allowed and directed Appellant to take note of various factors as indicated in judgment while considering issue of reduction in retirement age from 60 to 58 years – Pending decision of Appellant, direction was issued to Appellant to continue its employees till age of 60 years – On appeals, Division Bench of High Court held that Single Judge was not right in setting aside decision to roll back age of retirement, hence this appeal – Whether, clause 17(7)(iii) of Standing

Orders confer any right on employees to seek extension till completion of years – *Held*, clause 17(7)(iii) of Standing Orders did not create any right in favour of any employee – Use of word 'may' indicates that it gives discretion to Appellant to continue some employees after completing age of 58 years, till they complete 60 years of age – Clause 17(7)(iii) of Standing Orders enabled Appellant to continue any employee in service till he or she attains age of 60 years subject to medical fitness at end of each year – Said clause did not confer any right on employees to seek extension till completion of years – To this extent, impugned judgment stands modified – Appeal partly allowed. [*Chairman-cum-M.D. ITI Limited v. K. Muniswamy*]

(ABHAY S. OKA, J.)
2023-II-LLJ-179 (SC)
LNINDU 2023 SC 24

SERVICE REGISTER

Alteration of date of Birth – 2nd Respondent University corrected date of birth of Petitioner in entries of Service Register as per S.S.L.C. book – Petitioner made application to correct date of birth in S.S.L.C. book to School authorities who directed Petitioner to approach revenue authorities – Commissioner of Revenue Administration rejected *plea* of Petitioner for making alteration in S.S.L.C. book – University passed order permitting Petitioner to retire on superannuation, hence these petitions – Whether date of birth already entered in service register need to be changed – *Held*, since it was admitted fact even according to Revenue Authorities, claim made by Petitioner as his date of birth should have been taken into account – Date of birth already entered in service register need not have been changed – Since basis for entering date of birth in service register of University was solely depending on S.S.L.C. book, necessary correction ought to have been made in S.S.L.C. book itself – When Petitioner made application to Director of Government Examinations as well as Director of School Education they ought to have decided same based on available supporting documents like birth extract – They need not abdicate power and duty as well as Authority by relegating Petitioner to go before Commissioner of Revenue Administration to circumvent – Director of Government Examination directed to take up application of Petitioner for making correction or alteration of date of birth of Petitioner and do correction – After such correction, S.S.L.C. (certificate) shall be issued by Director of Government Examinations which shall be produced by Petitioner to Respondent University, who shall revisit order passed by University – Alteration or correction made in service register of Petitioner with regard to date of birth shall be restored in original position – University shall permit Petitioner to extend his service upto 60 years based on date of birth as given by Petitioner – Petitions ordered accordingly. [*Dr. O. Mathivanan v. Addl, Chief Secretary*]

(R. SURESH KUMAR, J.)
2023-II-LLJ-121 (Mad)

SUPERANNUATION

Date of Birth – Petitioner-employee sought for directing Respondents to restore Petitioner's original age of 21 years as on date of Petitioner's initial appointment in her service register and other official records including P.F. records and to allow him to continue in service till she attains age of superannuation of 58 years with all consequential benefits, hence this petition – Whether, exercise adopted by Respondents in unilaterally altering Petitioner's date of birth and prematurely retiring her from service, illegal – *Held*, Petitioner's date of birth and age altered by Respondents without any notice to Petitioner and was prematurely superannuated – Petitioner's age requires to be determined as 18 years, which was in accordance with regular practice adopted by Respondents in considering age based on medical certificate – Entire exercise adopted by Respondents in unilaterally altering Petitioner's date of birth and prematurely retiring her from service, illegal – Petitioner would be entitled for all service and monetary benefits, together with her reinstatement – Respondents directed to reinstate Petitioner back into service, together with continuity of service and other attendant benefits – Petition allowed. [*Sagunthala v. Tamil Nadu Minerals Ltd.*]

(M.S. RAMESH, J.)
2023-II-LLJ-76 (Mad)
LNINDORD 2023 MAD 99

SUPERNUMERARY POST

Caste – Petitioner sought for quashing order of Zilla Parishad in placing Petitioner on supernumerary post on ground that he failed to submit validity certificate of belonging to S.T. category, hence this petition - Whether, Zilla Parishad justified in placing Petitioner on supernumerary post – *Held*, Petitioner was nominee of freedom fighter (his father) – He belonged to 'Shimpi' caste, which falls in O.B.C. category – Zilla Parishad did not have any record to indicate that Petitioner was issued with appointment order after selecting and appointing him on post reserved for S.T. category – Nothing on record to indicate that Petitioner was appointed on vacant post, which was reserved for any backward class or category – In service record, social status of person always mentioned, notwithstanding, whether he was appointed from reserved category or from open category – Even if person belongs to open category, his caste and religion mentioned in service book – Petitioner never taken any service benefits on account of belonging to O.B.C. category, much less S.T. category – Zilla Parishad not justified in placing Petitioner on supernumerary post on ground that he failed to submit validity certificate of belonging to S.T. category – Impugned order set aside – Petitioner would stand restored to position that he earlier held prior to issuance of impugned order – Petition allowed. [*Suryakant v. State of Maharashtra*]

(RAVINDRA V. GHUGE, J.)
2023-II-LLJ-97 (Bom)
LNIND 2023 AUG 38

TERMINATION

Cancellation of community certificate – Petition challenging order of State Level Scrutiny Committee by which Committee concluded that claim of Petitioner that he belonged to scheduled tribe community was not genuine and consequential order of termination issued by 2nd Respondent/employer – Whether order of State Level Scrutiny Committee and consequential order of termination liable to be set aside – *Held*, various documents including school records of Petitioner himself, his paternal uncles, Paternal Aunts reflect that entire family members were shown as persons belonging to Scheduled Tribe community in question – Certificate had been issued to one of cousins of Petitioner pursuant to directions of this Court – Petitioner's claim that he belonged to specific Scheduled Tribe community was valid and he was entitled to certificate to that effect – Conclusions of State Level Scrutiny Committee were based on irrelevant and unsafe materials – There was report of Revenue Divisional Officer, accepting that people belonging to specific community had been living in area in question – Proceedings of State Level Scrutiny Committee set aside and certificate issued to Petitioner by Tahsildar held to be genuine – Since termination order was only consequence of order of State Level Scrutiny Committee and once order of State Level Scrutiny Committee was set aside termination order would automatically go – Termination order, set aside – Petitioner would be at liberty to re-join service with 2nd Respondent – Petition allowed. [*K.J. Arunmozhi v. TNSLSC*]

(R. SUBRAMANIAN, J.)
2023-II-LLJ-106 (Mad)
LNINDORD 2022 MAD 3477

MAY

BENEFITS

Maternity Benefits – Petitioner's representations to treat her leave of 180 days as maternity leave with salary and also to refix her seniority, rejected – Single Judge set aside impugned order passed by 2nd Respondent and directed Respondents to treat Petitioner's maternity leave as duty period for all purposes and pass appropriate orders, hence this appeal – Whether, act of employer-Appellant in depriving maternity leave and other benefits to Petitioner was *ex facie* bad in law – *Held*, Petitioner had rendered sufficient days of service and even assuming that there was shortage of working days in twelve calendar months, welfare legislation and benefits could not be deprived on mere interpretation and technicalities – Act of

employer-Appellant in depriving maternity leave and other benefits to Petitioner was *ex facie* bad in law – Order passed by 1st Appellant, would vanish – No interference with order of Single Judge – Appeal dismissed. [*TNSTCL, Coimbatore v. B. Rajeswari*]

(S. VAIDYANATHAN, J.)
2023-II-LLJ-351 (Mad)
LNIND 2023 MAD 47

Pension – Petitioner joined services of Respondent Bank as Clerk and was removed from service – Petitioner applied to bank for release of pension – In conciliation proceeding, bank took *plea* that Petitioner was not entitled to pension under applicable Pension Rules – Respondent passed impugned order declining to refer Petitioner's claim for adjudication before Industrial Tribunal, hence this petition – Whether, Petitioner would be entitled to pension – *Held*, Respondent had overstepped its jurisdiction in opining that Petitioner was not entitled to any pension under Pension Rules of bank – Respondent had failed to appreciate that it was Petitioner's specific case that he had voluntarily resigned from service but was thereafter malafidely removed from service – Despite removal of Petitioner from service he would be entitled to pension having rendered more than 20 years in service – This stand of Petitioner, could not have been simply rejected by Respondent on *prima facie* opinion and that too without granting him any opportunity to lead evidence before Tribunal – Impugned order wholly unsustainable – Matter remanded back to Respondent. [*Vijay Kumar Jhamb v. Union of India*]

(REKHA PALLI, J.)
2023-II-LLJ-391 (Del)
LNIND 2023 DEL 1396

Retiral Benefits – Petitioner-employee appointed as clerk with Respondent Bank was awarded punishment of compulsory retirement with superannuation benefits – Appellate authority upheld punishment of 'compulsory retirement with superannuation benefits, hence this application – Whether, Petitioner entitled for service benefits till date of his retirement – *Held*, disciplinary after applying his mind on gravity of charges had concluded that compulsory retirement with superannuation benefits would be just and proper punishment – As such having, thus proposed to limit punishment to compulsory retirement with superannuation benefits, could not have enlarged punishment at time of passing Final Order – Appellate Authority by its order uphold punishment of 'compulsory retirement with superannuation benefits – Appellate Authority also did not uphold other part of direction issued by disciplinary authority, insofar as same denied Petitioner's entitlement to any pay and allowance including increments falling due, if any, during period of his suspension – Respondents could not be permitted to deny legitimate

entitlement of Petitioner – Respondents directed to recompute retiral benefits of Petitioner and to disburse same in favour of Petitioner – Application disposed of. [*Swapan Kumar Basu v. Punjab National Bank*]

(RAJA BASU CHOWDHURY, J.)
2023-II-LLJ-361 (Cal)
LNIND 2023 CAL 883

COMPENSATION

Maintainability of Review Application – Industrial Disputes Act, 1947, Section 17 and 17A – Industrial disputes Rules, 1958, Rule 55 – 2nd Respondent-employee raised industrial dispute questioning his dismissal from service – Labour Court, by impugned award, directing Appellant Management to pay certain sum as compensation – Single Judge dismissed petition on ground that employer ought to have filed review application before Labour Court, hence this appeal – Whether, on coming into force of award passed in terms of Sections 17 and 17A of Act, review application was maintainable – *Held*, finding of Single Judge that review was possible and invoking provisions of Act were not correct – As per Rule 55 of Rules, Labour Court could correct only typographical mistake – Once award passed in terms of Section 17 and 17A of Act, on coming into force of said award, Tribunal becomes *functus officio*, hence review did not arise – Though 2nd Respondent had been served more than once, he did not appear before High Court either in person or through counsel of Single Judge and award of Labour Court, set aside – Appeal allowed. [*Management of Simpson & Co. v. Presiding Officer*]

(S. VAIDYANATHAN, J. AND R. KALAIMATHI, J.)
2023-II-LLJ-341 (Mad)
LNIND 2023 MAD 1104

CONCILIATION PROCEEDINGS

Exercise of Jurisdiction – Industrial Disputes (Amendment) Act, 2010, Section 2A(2) – Petitioner's filed application questioning jurisdiction of Tribunal to adjudicate case – Labour Court-tribunals held that notwithstanding repeal of Amendment Act, Labour Courts were competent to exercise jurisdiction under Section 2A(2) of Act, and upheld objection as to maintainability of application filed under Section 2A(2) of Act, hence this application – Whether, order passed by Tribunal upholding authority of Tribunal to proceed with case filed under Section 2A(2) of Act, without jurisdiction – *Held*, Section 2A(2) of Act would reveal that in order to invoke provisions of said section, application to Conciliation Officer was mandatory and it was only on expiry of 45 days from date of making such application that proceeding can be initiated before Labour Court – Said section read with obligation of conciliation Officer as provided in Act and rules framed thereunder, to initiate conciliation proceedings, did not create any incongruity in Scheme of Act – Amendment Act had already been applied and incorporated to principal Act – Repealing Act did not have effect of removing Section 2A(2) of Act from statute

book, so as to ouster jurisdiction of Labour Courts – State amendment did not have effect of removing Section 2A(2) of Act from statute book – Order passed by Tribunal upholding authority of Tribunal to proceed with case filed under Section 2A(2) of Act, could not be said to be irregular or without jurisdiction – Application allowed. [*Krishnadas Bhattacharjee v. State of WB*]

(RAJA BASU CHOWDHURY, J.)
2023-II-LLJ-370 (Cal)
LNIND 2023 CAL 976

CORRECTION OF AWARD

Jurisdiction – Application filed by Respondent Union for correction of award *qua* date of enforceability of award, allowed by Labour Court – Corrected award was passed holding that claim of workmen succeeded and grades and pay scale and other facilities, *i.e*. HRA, CCA, DA, LTC, etc. which were given to their counterparts in Government Printing Press with effect from 01.04.1982, hence this petition – Whether, finding returned and relief granted by Labour Court, sustainable – *Held*, Labour Court had power to correct award to supply omission or remove ambiguity that would have been prejudicial to interest of either of parties – Said jurisdiction was properly exercised by Labour Court – Labour Court had rendered award after properly perusing and appreciating evidence on record – View taken by Labour Court with respect to pay scale applicable to workmen in question was plausible view arrived at after taking into consideration relevant material on record – There was sufficient material constituting basis for findings recorded and findings seem to be unexceptionable based on relevant and sufficient material duly considered in *intra vires* exercise of power – Impugned Award did not suffer from any infirmity or manifest error apparent on face of proceedings – Petition dismissed. [*National Coop. Union of India v. Its Workmen*][

(GAURANG KANTH, J.)
2023-II-LLJ-428 (Del)
LNIND 2023 DEL 295

DISMISSAL

Alternate Employment – Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Section 2(t) – Petitioner-employee, driver under Respondent Corporation suffered from "Spondylitis Arthritis", which incapacitated him to perform his duty as driver – Pursuant to Inquiry, Petitioner was dismissed from service – Petitioner challenged order of Respondents, denying light alternate duty, as well as order of dismissal, hence these petitions – Whether, impugned order of dismissal passed by 2nd Respondent, sustainable – *Held*, reliance placed by Respondents on Section 2(t) of Act and rejection of Petitioner's request for alternate light duty on ground that his disability was less than 40%, unsustainable – Notice of documents pertain to Petitioner whose charges relate to unauthorized absence – Non-application of mind on part of Inquiry Officer

in submitting his report – When Disciplinary Authority passed impugned order of dismissal, no discussion with regard to findings rendered by Inquiry Officer nor consideration of explanation submitted by Petitioner – Disability suffered by Petitioner, have been totally ignored – As long years have been passed since Petitioner filed appeal and same had been kept pending, no willful purpose would be served by granting further time to Appellate Authority for consideration of Services – Impugned orders passed by 2nd Respondent, quashed – 1st Respondent directed to reinstate Petitioner back into service, together with all service and monetary benefits, including continuity of service – Petitions allowed. [*K. Chinnusamy v. Managing Director, TNSTCL*]

(M.S. RAMESH, J.)
2023-II-LLJ-272 (Mad)
LNINDORD 2023 MAD 604

Misconduct – Respondent-employee filed petitions challenging penalty of dismissal from service – Single Judge *vide* order dismissed petitions however, Division Bench of High Court reversed order of Single Judge, hence these appeals – Whether, order of penalty of dismissal from service was justified *qua* other charges and Division Bench of High Court was right in setting aside same – *Held*, High Court did not test correctness of order of penalty – Opinion of High Court in impugned order that acts of omission and commission attributed to Respondent do not constitute grave misconduct, was very-very curious – Such finding was nothing but veiled attack on Full Court of High Court – After holding so, High Court had gone to extent of certifying Respondent as innocent and honest officer – One more reason articulated in impugned order of High Court that second show cause notice indicated penalty proposed and that therefore, same was contrary to law – High Court did not consider enquiry report and did not take decision in advance to impose penalty of removal from service – It was not case of Respondent that Full Court of High Court took decision to impose penalty of dismissal from service even before furnishing copies of enquiry reports to Respondent – Opinion of High Court that second show cause notices were in violation of principles of natural justice was not legally correct – Impugned order of Division Bench of High Court, set aside – Order of penalty imposed upon Respondent, upheld – Appeals allowed. [*Registrar General v. M. Narasimha Prasad*]

(V. RAMASUBRAMANIAN, J.)
2023-II-LLJ-335 (SC)
LNIND 2023 SC 251

EMPLOYER-EMPLOYEE RELATIONSHIP

Espousing of Cause – Petitioner-Workmen raised industrial dispute before Labour Court for enhanced salary and all other benefits at *par* with regular employees of Respondent No. 1/Management – Labour Court held that there was no

employer-employee relationship between Petitioners and Respondent No. 1 and cause of Petitioners had not been espoused by Union, hence this petition – Whether, cause of Petitioners was properly espoused – Whether, there was employer-employee relationship between Petitioners and Respondent No. 1 – *Held*, Petitioners proved on record documents issued by Mazdoor Union to Respondent No. 1 espousing cause of Petitioners – In pursuance of said authorization, Union issued demand letters and filed claim petition before Conciliation Officer – Based on said claim Petition, appropriate Government referred said dispute to Labour Court for adjudication – Just because there was no witness from Union, it could not be said that cause of Petitioners had not been espoused by Union – Respondent No. 1 placed on record contract entered between Respondent No. 1 with various contractors for providing security services – Respondent No. 1 was treated as principal employer – Determination of service conditions of employees was exclusively within domain of contractor – No evidence had been placed on record to prove that Respondent No. 1 had any control in determining service conditions of employees of contractor – Petitioners could not claim allowances and incentives as available to regular employees of principal employer – Petition partly allowed. [*Omji Srivastava v. P.W.D/C.P.W.D.*]

(GAURANG KANTH, J.)
2023-II-LLJ-406 (Del)
LNIND 2023 DEL 1148

EMPLOYMENT

Compassionate Appointment – Appellants appeal before Division Bench of High Court dismissed and confirmed judgment passed by Single Judge directing Appellants to consider case of Respondent-employee for appointment on compassionate ground, hence this appeal – Whether, Respondent entitled to appointment on compassionate ground on death of her father – *Held*, Respondent should not be entitled to appointment on compassionate ground on death of her father – After period of 24 years from death of deceased employee, Respondent should not be entitled to appointment on compassionate ground – If such appointment made now and after period of 14/24 years, same should be against object and purpose for which appointment on compassionate ground was provided – Both Single Judge and Division Bench of High Court committed error in directing Appellants to reconsider case of Respondent for appointment on compassionate ground – Impugned judgment passed by Single Judge and High Court unsustainable, and set aside – Appeal allowed. [*Fertilizers and Chemicals Travancore Ltd v. Anusree K.B.*]

(M.R. SHAH, J.)
2023-II-LLJ-249 (SC)

Reinstatement and Regularization of Service – Mahatma Gandhi National Rural Employment Guarantee Act, 2005 – Government passed order pursuant to which scheme was disbanded and in consequence thereof, MNPs who were working stood disengaged-terminated – Single Judge of High Court allowed writ petition and while quashing order directed State to reinstate members of associations who have served as MNP – High Court affirming order of Single Judge directed State Government to create posts but shall accommodate persons who were on rolls of MNP, hence appeals – Whether, employees who were discontinued were eligible for reinstatement and regularization of service – *Held,* Respondents were engaged in scheme and were paid honorarium – No justification as long as scheme continues in State under mandate of Act, no reason to discontinue such persons who were working under respective schemes undertaken by Government in fulfillment of object of Act, unless later found to be unsuitable for retention in service or has attained age of superannuation – In absence of sanctioned post, State could not be compelled to create post and absorb persons who were continuing in service of State – Direction of High Court to reinstate after creating posts and absorb Respondents based on their qualification unsustainable in law and deserves outright rejection – Judgment passed by Division Bench of High Court, set aside – Appeals allowed. [*Government of TN v. TN Makkal Nala Paniyalargal*]

(AJAY RASTOGI, J.)
2023-II-LLJ-233 (SC)
LNIND 2023 SC 264

INDUSTRIAL DISPUTE

Approval Petition – Industrial Disputes Act, 1947, Section 2-A – Tamil Nadu Industrial Disputes Rules, 1958, Rule 34(7) – Respondent-employee, dismissed from service and Management-employer filed approval petition as contemplated under Section 33(2)(b) of Act – Labour Court confirmed order of Management by granting approval however, Single Judge set aside order of Labour Court, hence this appeal – Whether, Single Judge erred in setting aside order of Labour Court confirming order of Management by granting approval – *Held*, employee was dismissed from service and matter was pending for nearly 10 years – Section 2-A of Act was amended introducing limitation period of 3 years – It was open to employee to raise industrial dispute within period of 3 years from date of receipt of copy of order – In case of such dispute being raised before Conciliation Officer, if conciliation fails or conciliation not concluded within period of 45 days from date of initiation, it was open to employee to approach Labour Court – Labour Court expected to take up matter and decide same following timeline prescribed under Rule 34(7) of Rules by not adjourning matter beyond 7 working days at any given point of time – Appeal allowed. [*Management of HMIL v. M. Ganesan*]

(S. VAIDYANATHAN, J. AND R. KALAIMATHI, J.)
2023-II-LLJ-317 (Mad) LNIND 2023 MAD 1004

REINSTATEMENT WITH CONTINUITY OF SERVICE

Non-reporting for Duty – Labour Court *vide* its award had directed reinstatement of Respondent-employee with continuity of service with full back wages – Single Bench of High Court upheld order of Labour Court, hence this appeal – Whether, impugned order passed by Courts below, sustainable – *Held*, statement of counsel for Management was recorded that Management would reinstate workman and he should be communicated accordingly so as to enable him to report for duty – Management had sent various communications by Registered Post-Courier, requesting Respondent to report for duty, however, there was no response – Respondent had not reported for duty till date – Respondent was no more interested in joining duty and must have been gainfully employed after leaving job in question – Impugned order passed by High Court and award of Labour Court granting back-wages and continuity in service to Respondent workman deserves to be set aside – Appeal allowed. [*Creative Garments Ltd v. Kashiram Verma*]

(RAJESH BINDAL, J.)
2023-II-LLJ-285 (SC)
LNIND 2023 SC 195

REINSTATEMENT

Continuity of Service and Back Wages – Industrial Disputes Act, 1947, Sections 2 (oo)(bb) 25-G and 25-H – Respondent-workman appointed by Petitioner-Management as Helper, terminated from services – Labour Court *vide* impugned award answered terms of reference in favour of Respondent and was awarded reinstatement with continuity of service along with 25% of back wages, hence this petition – Whether, impugned award passed by Labour Court, sustainable – *Held*, Labour Court failed to give adequate attention to engagement letters and erred in evaluating nature of employment – Employment of Respondent was purely contractual and need based in nature – Termination was result of non-renewal of contract of employment on its expiry, it did not qualify to be termed as 'retrenchment' – Labour Court while directing reinstatement of Respondent in service failed to take wider view of circumstances and of consequences that would follow – Case of Respondent falls within exception of Section 2 (oo) (bb) of Act and hence it was not case of retrenchment – As there was no retrenchment both Sections 25G & 25H of Act were not attracted – Impugned award passed by Labour Court, suffers from perversity and glaring error of law – Respondent was not entitled for reinstatement in service or back wages – Direction to release principal amount of Rs.50,000/- with interest to Petitioner – Petition allowed. [*Haryana Roadways v. Yunus Khan*]

(GAURANG KANTH, J.)
2023-II-LLJ-397 (Del)
LNIND 2023 DEL 1131

Jurisdiction – Industrial Disputes Act, 1947, Sections 11A and 17-B – Labour Court set aside order of dismissal of Respondent-employee and directed Appellant-Management to reinstate him into service with full back-wages and other monetary benefits, however, with cut in increment for a period of two years with cumulative effect – Single Judge of High Court confirmed order of Labour Court, hence this appeal – Whether, Labour Court was empowered to interfere with order of Management imposing different punishment in that place – *Held*, purpose of enactment to introduce Section 11-A in the year 1971 was to empower Labour Court to re-appreciate evidence and come to a different conclusion and in case punishment is shockingly disproportionate to charge(s) leveled against employee, punishment shall be interfered with – Power of Civil Court was completely different from that of Labour Court – Civil Court decide issues between parties based on contract, however, Labour Court empowered not only to decide issues based on contract, but also empowered to create new contract – Impugned Award of Labour Court, need not be interfered with, as Labour Court had imposed punishment of stoppage of increment in wages for period of two years with cumulative effect – Past record of Respondent/employee was clear – Employer-Management need not pay back-wages from date of dismissal till date of Award and that instead of stoppage of increment for period of two years with cumulative effect, back-wages deprived – Sum of Rs.5.5 lakhs had been paid as wages under Section 17-B of Act – Employee would also be extended VRS benefits – Appeal disposed of. [*Managing Director v. E. Poongavanam*]

(S. VAIDYANATHAN, J.)

2023-II-LLJ-343 (Mad) LNIND 2023 MAD 958

RETIREMENT BENEFITS

Entitlement – 6th Respondent cancelled community certificate granted to Appellant, employee – Two days before superannuation of Appellant, he received a cessation order on grounds of his caste certificate being false, and all his retirement benefits except PF were withheld from him – Petition filed by Appellant for restoration of community certificate dismissed, hence this appeal – Whether, Appellant entitled to post-retirement benefits – *Held*, Respondent claimed Appellant's community certificate to be fake however, such claim, not proved – Though two reports declaring community certificate of Appellant as fake were submitted after inordinate and unexplained delay, however, both reports had not allowed participation of Appellant – Any person, whose entire identity, and their past, present and future rights challenged, must atleast be given opportunity to be fairly heard, however, such right had been denied to Appellant – Burden of proof on Respondents to disprove nature of certificate, had not been discharged – In absence of discharge of such burden of proof, community certificate of Appellant held to be genuine – Impugned orders, set aside – Appellant entitled to post-retirement benefits accrued to him by way of his 38 years long service – Respondent bank

directed to grant all post-retirement benefits to Appellant along with 6% Simple Interest – Appeal allowed. [*R. Sundaram v. TN State Level Scrutiny Committee*]

(KRISHNA MURARI, J.)
2023-II-LLJ-278 (SC) LNIND 2023 SC 194

RETRENCHMENT

Change in Condition of Service – Industrial Disputes Act, 1947, Section 33(1) – Respondent Union approached Industrial Court with complaint of unfair labour practices alleging that Petitioner had decided to remove, retrench or render surplus Professional Service Representatives ("PSRs") – Pending complaint, application filed by Respondent Union before Industrial Court for interim relief allowed by directing interim working arrangement till disposal of application, hence this petition – Whether, retrenchment itself amounts to change in condition of service – *Held*, existence of Industrial dispute concerning PSRs was required to be appreciated in context of Schedule of demand – Complainant demanded gainful employment-work to all PSRs and in event Petitioner was unable to provide work to PSRs, be responsible to their continued employment and service conditions – Prohibition was against altering conditions of service in regard to any matter connected with dispute – It was nexus between matter in dispute and action complained of that determines applicability of Section 33(1) of Act – Industrial Court, was within his rights in critically examining conduct of Petitioner in passing retrenchment order after copy of ULP complaint and notice about application for interim relief being moved was served – Industrial Court had exercised discretion keeping in view of principles which govern grant of interim relief and peculiar facts of case as well – No justifiable reason to interfere with discretionary order in exercise of extraordinary writ jurisdiction – Petition dismissed. [*Sandoz (P) Ltd v. Bhartiya Kamgar Karmachari*]

(N.J. JAMADAR, J.
2023-II-LLJ-449 (Bom)
LNIND 2023 BOM 281

STOPPAGE OF INCREMENT

Jurisdiction of Tribunal – U.P. Public Service (Tribunals) Act, 1976, Section 5 – 2nd Respondent filed claim petition challenging orders imposing punishment of Censure entry and stoppage of annual increments – Tribunal by impugned order allowed claim petition, hence this petition – Whether, Tribunal erred in entertaining claim petition and allowing same, without deciding *plea* of limitation – *Held*, 2nd Respondent submitted representation against punishment order to Corporation – Representation was treated as appeal and was rejected by means of order – Representations were not filed under any Rule governing service conditions of 2nd Respondent – In such circumstances, filing of successive representations would not extend period of limitation – Tribunal erred in law in not deciding *plea* of limitation

because on ground that claim petition had been admitted – Tribunal had no power to condone delay in filing claim petition – Claim petition filed after expiry of limitation period had to be dismissed and it could not be entertained and adjudicated on its merits because if had been admitted – Claim petition filed by 2nd Respondent before Tribunal challenging punishment order and appellate order was barred by period of limitation prescribed under Section 5 of Act – Tribunal erred in entertaining claim petition and allowing same – Impugned judgment passed by Tribunal, set aside – Petition allowed. [*U.P. Power Corp. Ltd v. U.P. State Public Service Tribunal*]

(RAMESH SINHA, J. AND SUBHASH VIDYARTHI, J.)
2023-II-LLJ-265 (All)
LNINDORD 2023 LUCK 41

TERMINATION

Approval – Industrial Disputes Act, 1947, Section 33 (2) (b) – Application filed by Petitioner-Management under Section 33 (2) (b) of Act, seeking approval of Labour Court for terminating services of Respondent-employee, dismissed on ground that there existed no evidence before enquiry officer to establish misconduct on part of Respondent, hence this petition – Whether, Labour Court erred in not allowing approval application filed by Petitioner – *Held*, Petitioner conducted domestic enquiry in accordance with relevant rules and domestic enquiry was in accordance with principles of natural justice – *Prima facie* case of misconduct was made out against Respondent based on legal evidence adduced before enquiry officer – Petitioner had come to *bona fide* conclusion that Respondent was guilty and dismissal did not amount to unfair labour practice and was not intended to victimize Respondent – Petitioner had remitted one month's salary to Respondent as per requirement of Section 33(2)(b) of Act – Petitioner applied for approval within time limit as prescribed under Section 33(2)(b) of Act – All requirements under Section 33(2)(b) of Act were satisfied and therefore Labour Court erred in not allowing approval application filed by Petitioner – impugned Orders, set aside – Approval application filed by Petitioner under Section 33(2)(b) of Act, allowed – Petition allowed. [*D.T.C. v. Salek Chand*]

(GAURANG KANTH, J.)
2023-II-LLJ-417 (Del)
LNIND 2023 DEL 1124

Approval **–** Industrial Disputes Act, 1947, Section 33(2) – Industrial Disputes (Gujarat) Rules, 1966, Rule 63(2) – Respondent-workman under employment of Petitioner company terminated from service on ground of misconduct – Petitioner had preferred approval application under Section 33(2) of Act and Rule 63(2) of Rules – Labour Court rejected approval application of Petitioner company, hence this petition – Whether, impugned order passed by Labour Court, sustainable – *Held*,

Labour Court had rejected application filed by Petitioner for approval mainly on ground that such application was not filed simultaneously on same day but it filed after delay of one month and 2 days after dismissal of Respondent as well as payment of full and final settlement "payment of wages" – This breach of Labour Court was very hyper technical – Delay of one month and two days in filing of approval application was certainly not causing any prejudice to right of any party – Petitioner may not get any benefit for causing such delay – When employer had acted in pursuant to same transaction, delay of one month and two days in filing approval application would not be considered as fatal but it would be considered in compliance of Section 33(2)(b) of Act – Impugned order passed by Labour Court set aside with further direction to allow approval application, as prayed for – Petition allowed. [*GD Lab Solution P Ltd v. Vipulbhai Dineshbhsi Patel*]

(SANDEEP N. BHATT, J.)
2023-II-LLJ-384 (Guj)
LNIND 2023 GUJ 1

JUNE

BENEFITS

Leave Encashment – Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010, Regulation 67 – Petitioner-employee sought for directing Respondents to release benefit of earned leave encashment with interest of 12% per annum from date of superannuation, hence this petition – Whether, Petitioner entitled for benefit of earned leave encashment with interest of 12% per annum *Held*, provisions of Regulation 67 of Regulations were not plain and completely silent about nature of penalties, which result in cessation of master-servant relationship – Interpretation of Regulation-67 of Regulations, which was favourable to employer, was not permissible, when such interpretation deprives employee from his right to leave encashment – Employer could not be permitted to exercise discretion, when disciplinary authority itself arrived at categorical finding that there was no financial loss to Bank – Impugned order, quashed – Respondents directed to release amount of earned leave encashment to Petitioner within certain period – Petition allowed. [*Mohanlal Gupta v. Madhyanchal Gramin Bank*]

(MANINDER S. BHATTI, J.)
2023-II-LLJ-482 (MP)

Overtime Allowance – Factories Act, 1948, Section 59(1) – Employees working as Supervisors, Works Engineer, Section Officer, *etc.,* filed writ petitions, claiming overtime allowance – High Court held that even those employees working as Supervisors were entitled to Double Over Time Allowance, hence these appeals – Whether persons employed as Supervisors were entitled to Double Over Time

Allowance in terms of Section 59(1) of Act – *Held*, chart of duties did not show that Respondents were required to perform manual labour or clerical work as regular part of their duties – High Court fell into error in holding that performance of certain functions, such as setting right malfunctioning of feeder, side-lay, double-sheet detector, photocell, *etc.,* to ensure uninterrupted running of machinery, were manual functions – In any case, Respondents, who were holders of civil posts or in civil services of State till year 2006, could not have claimed benefits of provisions of Chapter VI of Act *de hors* service rules – Distinction made by Government of India in their Office Order related to persons drawing basic pay of more than Rs.2,200/- Tribunal and High Court did not consider distinction between persons in Government service and those in private service and effect of statutory rules upon conditions of service of Respondents, including their liability to work for extra hours – Tribunal reached diametrically opposite findings of fact in respect of persons holding similar supervisory posts – Orders of Tribunal and High Court, unsustainable – Appeals allowed. [*Security Printing & Minting Corp. v. Vijay D. Kasbe*]

(V. RAMASUBRAMANIAN, J.)
2023-II-LLJ-543 (SC)
LNIND 2023 SC 280

Wages – Industrial Disputes Act, 1947, Section 10 – Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958, Section 5(2)(b) – Central Government issued notification declaring April 14, birth anniversary of Dr. Ambedkar as national holiday – Many of 'round-the-clock shift workers' employed in 2nd Respondent corporation had to work on said date also – Petitioner-trade union demanded reference under Section 10 of Act, 1947 that they should be paid twice wages for having worked on said date – 1st Respondent rejected request of Petitioner, hence this petition – Whether, Round-the-clock shift workers working in 2nd Respondent corporation would be entitled to wages – *Held*, second Saturday was very much working day as per 'round-the-clock shift workers' shift-roster – Petitioner-trade union were not asking for double benefit – Petitioner-trade union only seek benefit as contemplated in Section 5(2)(b) of Act, 1958 – As far as 'round-the-clock shift workers' were concerned, there was no concept of second Saturday – Any 'round-the-clock shift worker' who had worked on 14th April 2018 would be entitled to benefit set out in Section 5(2)(b) of Act, 1958 – 'Round-the-clock shift workers' working in 2nd Respondent corporation would be entitled to benefit sought for – 2nd Respondent would confer monetary benefit on them accordingly – Petition disposed of [*Kudankulam Nuclear Power Emp. Union v. Govt. of India*]

(G.R. SWAMINATHAN, J.)
2023-II-LLJ-494 (Mad)
LNINDORD 2023 BMM 395

COMPASSIONATE APPOINTMENT

Recruitment Rules – Petitioner's claim for appointment on compassionate ground rejected by Respondent/Bank on ground that he was not suitable for job in clerical cadre, hence this petition – Whether order by which claim of Petitioner had been rejected in clerical cadre, justified – Whether Petitioner could be considered for appointment in sub-staff cadre which pertains to Class IV post – *Held*, Court did not find any reason to interfere with order by which claim of Petitioner had been rejected in clerical cadre when prospective employer/Bank itself not found Petitioner suitable for appointment – Scheme contemplates appointment on compassionate grounds in order to tide over sudden financial crisis – Recruitment rules were to be followed whereby higher qualification was not to be taken into account while making direct recruitment – Petitioner was graduate – Condition in recruitment rules would only be applicable where Respondents were making direct recruitment and not on compassionate grounds – Clause of policy provides that person should be eligible and suitable for post – Scheme applicable for purpose of compassionate appointment, would entail Petitioner to be eligible as per recruitment rules for Class IV post meaning thereby that he would have to have qualification of Class Xth or Class XIIth or equivalent – Respondents could not be allowed to exclude graduate candidate for purpose of compassionate appointment on sub-staff cadre as same would run against policy of providing compassionate appointment to tide over sudden financial crisis – Competent authority directed to consider case of Petitioner for compassionate appointment in sub staff cadre or against any Class IV post – Petition disposed of. [*Vishal Kumar Balmiki v. Punjab National Bank*]

(ABDUL MOIN, J.)
2023-II-LLJ-638 (All)
LNINDORD 2023 LUCK 73

DISCHARGE FROM SERVICE

Criminal charges – Railway Protection Force Rules, 1987, Rules 52.1,52.2 and 67.2 – Respondent, employed as Constable in Railway Protection Force was discharged from service on ground that First Information had been registered against him – Representation made by Respondent after acquittal, not accepted – Respondent challenged order of discharge – Single Judge dismissed petition but Division Bench held that his discharge from service would not be valid, hence this appeal – Whether Division Bench justified in holding that order of discharge was not valid – *Held*, Rules 52.1 and 52.2 show that upon selection of recruit but before his formal appointment to Force, his character and antecedents had to be verified as per procedure prescribed by Central Government – If, on verification, recruit was not found to be suitable for Force, he shall not be appointed – Rule 67.2 states that direct recruit selected for being appointed as enrolled member, till time he was not formally appointed to Force, could be discharged at any stage, for reasons to be

recorded in writing – Respondent was not formally appointed – It was during character and antecedents verification exercise that Respondent's involvement in criminal case had come to notice of authorities – Authorities had, thereupon, in exercise of power under Rules 52.2 and 67.2 passed order/letter recording in writing that Respondent was not deemed to be fit for service in interest of Force – Discharge order/letter expressly states that Respondent had conducted himself in unbecoming manner and, keeping in view that he was facing serious criminal charges, it was decided to discharge him – No legal fault with discharge order – Order/letter of discharge was passed after consideration of relevant facts and circumstances, which order/letter, could not have been interfered with or set aside by Division Bench – Impugned judgment, set aside – Appeal allowed. [*Union of India v. Santosh Kumar Singh*]

(SANJIV KHANNA, J.)
2023-II-LLJ-598 (SC)
LNINDU 2023 SC 68

DISMISSAL

Opportunity of hearing – SBIOSR Rules, Rule 19 – Appointing Authority passed order imposing upon Respondent penalty of "Dismissal from Service" and treating his period of suspension as not on duty – Appellate Authority dismissed appeal – Single Judge quashed and set aside order of dismissal passed by Appellant-Bank and directed Appellant to pay all consequential benefits which was confirmed by Division bench, hence this appeal – Whether impugned order of High Court setting aside order of dismissal liable to be quashed – *Held*, it was only pursuant to direction given by this Court, Appointing Authority was expected to hear Respondent and pass appropriate order – This Court had kept all contentions of all parties open – Appointing Authority after issuing show-cause notice and granting opportunity of hearing to Respondent passed order imposing penalty of "Dismissal from Service" with effect from date when first order of dismissal was passed by Appointing Authority – Since all contentions were kept open by this Court while allowing appeal filed by Appellant-Bank, no affirmative action expected from Appellant-Bank – Order of Appointing Authority dismissing Respondent from service after granting opportunity of hearing to Respondent was in consonance with direction given by this Court and could not be said to be arbitrary, illegal or in violation of Rule 19(3) – Impugned order of High Court setting aside order of dismissal being under misconception of facts and law, quashed and set aside – Appeal allowed. [*State Bank of India v. Kamal Kishore Prasad*]

(BELA M. TRIVEDI, J.)
2023-II-LLJ-592 (SC)
LNIND 2023 SC 35

INDUSTRIAL DISPUTE

Reference – Petitioner Unions' employees were facing eviction from their allotted accommodations and through their unions, had raised demand for making reference for industrial adjudication – Demand had met with rejection by Central Government, hence these petitions – Whether, Central Government was justified in declining to make order or reference in respect of disputes raised by Petitioner-Unions to CGIT for adjudication – *Held*, Petitioners have not placed on record any material to show that provision of 'housing' is one of terms of employment – On contrary, perusal of Housing Rules, Leave and License Agreement and order of appointment clearly suggests that 'housing' did not appear to term of employment – Unless dispute sought to be raised was covered by expression 'industrial dispute' under Section 2(k) read with section 10 of Act, there was no question of making an order of reference by appropriate Government – It would be necessary for appropriate Government to first form opinion as to whether dispute sought to be raised comes within ambit of expression 'industrial dispute' – Even otherwise relevant stipulation of Agreement did not create any right to seek housing accommodation therefore, based on that Agreement, unable to hold that housing was term of employment – Deduction/stoppage of Performance Linked Incentive (PLI) was not independent action and was resorted to only as consequential action for non-vacation of residential accommodations by employees – It could not be stated that impugned order ignores dispute with regard to PLI, much less order could be set aside on that count – No error in order declining to make order of reference – Petitions dismissed. [*All India Service Eng. Assoc. v. Union of India*]

(SANDEEP V. MARNE, J.)
2023-II-LLJ-513 (Bom)
LNIND 2023 BOM 198

MISCONDUCT

Major Penalty – Punjab and Sindh Bank Officers Employees (Conduct) Regulations 1981, Regulations 3(1), 3(3), 20(4) and 24 – Disciplinary authority held Petitioner guilty of misconduct as per Regulations and awarded major punishment which was affirmed by Appellate authority, hence this petition – Whether charge leveled against Petitioner was contrary to mandate of Regulations 3(1), 3(3), 20(4) and 24 – *Held*, in inquiry report, Inquiry Officer had gone through all transactions and did not record any finding that they were in respect of transaction 'concerning movable property' of value exceeding Rupees Twenty Five Thousand or said transactions were other than what was required to be disclosed in annual returns filed by officer concerned – Disciplinary authority failed to record finding as to how transactions reflected in statement of account violated Regulation 20(4) – Appellate order did not deal with any of submissions made by Petitioner, wherein, for first time Petitioner explained each and every financial transactions that happened in bank

account to demonstrate that same did not relate to movable property held by Petitioner of value exceeding Rupees Twenty Five Thousand – Appellate authority passed order in casual manner without dealing with said averments and was unsustainable – Proceedings, initiated and culminated, against Petitioner leading to passing of impugned orders of punishment, did not demonstrate any violation of Regulation 20(4) or for that matter violation of Regulation 3(1) and 3(3) or 24 – Nowhere did Petitioner ever admit guilt and, thus, it was incumbent upon disciplinary authority to record its findings on each such charge – Impugned orders punishing Petitioner with major penalty, unsustainable and quashed – Petition allowed. [*Renu Chaurasiya v. Punjab and Sind Bank*]

(PANKAJ BHATIA, J.)
2023-II-LLJ-645 (All) LNINDORD 2023 LUCK 74

PAYSCALE

Educational qualification – Constitution of India, 1950, Articles 14 and 16 – Division Bench of High Court confirmed order of Single Judge, holding that Respondents possessing degree of BAMS (Bachelor Ayurved in Medicine and Surgery) should be treated at *par* with doctors holding MBBS degrees and were entitled to benefits of recommendations of Pay Commission in question, hence these appeals – Whether different scales of pay could be fixed for officers appointed to same cadre, on basis of educational qualifications possessed by them – Whether Allopathy doctors and doctors of indigenous medicine could be said to be performing "equal work" so as to be entitled to "equal pay" – *Held*, classification based upon educational qualification was not violative of Articles 14 and 16 of Constitution – Allopathy doctors required to perform emergency duties and to provide trauma care – Emergency duty that Allopathy doctors were capable of performing and trauma care that they were capable of providing, could not be performed by Ayurved doctors – It was not possible for Ayurved doctors to assist surgeons performing complicated surgeries, while MBBS doctors could assist – Every alternative system of medicine have its pride of place in history – Practitioners of indigenous systems of medicine did not perform complicated surgical operations – Post-mortem or autopsy was not carried out by/in presence of Ayurved doctors – During out-patient days (OPD) in general hospitals in cities/towns, MBBS doctors were made to attend to hundreds of patients, which was not case with Ayurved doctors – State claimed that IV injections and ART injections could not be administered by Ayurved doctor – Even while recognizing importance of Ayurved doctors and need to promote alternative/indigenous systems of medicine, both categories of doctors were certainly not performing equal work to be entitled to equal pay – Impugned order of High Court set aside – Appeals allowed. [*State of Gujarat v. Dr. P.A. Bhatt*]

(V. RAMASUBRAMANIAN, J.)
2023-II-LLJ-566 (SC) LNIND 2023 SC 354

Qualification – Petitioner filed representation seeking higher scale of pay commensurate with his higher qualification in terms of memorandum – Director of

Library Services rejected representation on ground that Petitioner was not entitled to get higher scale of pay being librarian of rural library, hence this petition – Whether Petitioner entitled to get benefit of higher scale of pay – *Held*, librarians of rural library who improved qualification were entitled to get higher scale commensurate with their higher qualification – Once revision of pay on basis of better qualification was granted, Government could not have looked back and said earlier Memorandum would continue to govern these rural librarians – Petitioner who improved qualification by obtaining degree in Library and Information Science entitled to get higher scale of pay – Impugned order passed by Director of Library Services vitiated with illegalities and quashed – Petition disposed of. [*Suprabhat Thakur v. State of West Bengal*]

(RABINDRANATH SAMANTA, J.)
2023-II-LLJ-656 (Cal)
LNIND 2023 CAL 971

PAYMENT OF GRATUITY

Appellate authority – Payment of Gratuity Act, 1972, Section 7 – Appellate authority refused to entertain appeal filed by employer on ground that entire amount determined by Controlling Authority under Act would have to be deposited in terms of Section 7(7) and without such deposit, no appeal could be entertained – On challenge thereto, Single Judge dismissed petition, hence this appeal – Whether order of appellate authority in not entertaining appeal was valid – *Held*, when there was statutory provision which contemplates particular thing to be done in particular manner, employer would have to deposit entire amount of payment of gratuity determined by Controlling Authority and prefer appeal within period of sixty days from date of receipt of order of Controlling Authority – Appellate Authority was empowered to condone period of sixty days if appeal was not filed within stipulated period and maximum period for authority to entertain appeal was One Hundred and twenty days beyond which he becomes *functus officio* – Appeal not filed within period of One Hundred and twenty days – No amount deposited before Controlling Authority before filing appeal – Though this Court had passed order in earlier petition directing employer to remit 50% of amount, order of appellate authority in not entertaining appeal which was contrary to provisions of Act was valid – No error in order of Single Judge – Appeal disposed of. [*Chintadripet Co-op Society Ltd v. Joint Commissioner*]

(S. VAIDYANATHAN, J. AND J. SATHYA NARAYANA PRASAD, J.)
2023-II-LLJ-555 (Mad)
LNIND 2023 MAD 1319

PENSION

Construction worker – The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, Sections 14 and 17 – Petitioner's application for release of his pension rejected by Respondent Board on ground that he did not comply with three-year requirement for release of pension under Section 14(2) – Whether Petitioner was entitled to pension under Act and Rules – *Held*, Petitioner had been beneficiary for more than three years – As per his

own registration card with Board, he attained age of superannuation in certain year – Petitioner was fully entitled to pensionary benefits as per Act and Rules – Reliance on Aadhaar Card in order to reject application for pensionary benefits to worker was completely contrary to scheme and spirit of Act, which was beneficial legislation – Aadhaar card was not even one of the documents required under Rule 266(2) of Rules as document to prove age – Age of Petitioner was already known to Board as per registration card which was issued by it – Rejection of pensionary benefit was contrary to law – Board directed to release pension of Petitioner – Petition disposed of. [*K. Murugan v. Delhi Construction Workers Welfare Board*]

(PRATHIBA M. SINGH, J.)
2023-II-LLJ-663 (Del)
LNIND 2023 DEL 1421

Work charged employee – Work Charged Establishment Revised Service Conditions (Repealing) Rules, 2013, Rule 5 – Appellants/Petitioners, work charged employees regularized under Rules challenged Rule 5(v) – Larger Bench of High Court upheld Rule 5(v) and held that period spent in work charged establishment would be counted only to extent of shortfall in qualifying period of service for grant of pension, which shall be made up by adding that period spent under work charged establishment and entire period spent under work charged establishment would not be taken into account, hence these appeals – Whether entire service rendered as work charged under work charged establishment shall have to be counted and/or considered for determination of amount of pension after work charged employees were regularized under Rules – *Held*, to make work charged employees eligible for pension, Rule 5(v) provides that if any work charged employee, whose services had been regularized under Rules, was short of qualifying service, to extent of such shortage of qualifying service, services rendered as work charged to be counted for purpose of qualifying service for pension – Larger Bench rightly held that for purpose of pension, only such period from work charged tenure would be added for making service of employee, who had been regularized to qualify him for pension – Work charged employees not appointed on substantive post and not appointed after due process of selection and as per recruitment rules – Services rendered as work charged could not be counted for purpose of pension/*quantum* of pension – Appeals dismissed. [*Uday Pratap Thakur v. State of Bihar*]

(M.R. SHAH, J.)
2023-II-LLJ-559 (SC)
LNIND 2023 SC 332

RECRUITMENT

Educational qualification – Petition filed to direct 1st Respondent to accept candidature of Petitioner for post of Assistant Grade-II (Hindi) as Petitioner's application was rejected on ground that Petitioner did not possess Hindi as one of main subject in all three years of graduation – Whether, 1st respondent could be directed to accept candidature of Petitioner for post of Assistant Grade-II (Hindi) – *Held*, Hindi was not main subject and only second language during first and second year of Petitioner – Studying Hindi as second language could not satisfy essential

requirement which mandated degree of recognized University with Hindi as main subject – Petitioner, who did B.Sc (Chemistry, Zoology and Biotechnology) did not satisfy essential requirement since Hindi was not main subject during under graduation – Petitioner possessing post –graduation degree in Hindi was only desirable qualification and did not fulfill essential qualification – Rejection of claim made by Petitioner in petition, would not stand in way of Petitioner to participate in similar selection – Petition disposed of. [*Senapati Harthi Dharmarao v. Executive Director*]

(N. ANAND VENKATESH, J.)
2023-II-LLJ-689 (Mad) LNINDORD 2023 MAD 119

TRANSFER

Punitive transfer - Constitution of India, 1950, Article 14 – Petitioners, working as Technician with Respondent were transferred from one division to other on ground of physical assault of co-workers – Petitioner's challenge to order of transfer dismissed by Tribunal, hence these petitions – Whether order of transfer of Petitioners liable to be set aside – *Held*, Petitioners were being transferred on account of certain incidents alleged to have taken place on certain date – Incident, if attributable to Petitioners, was one which affects industrial peace, however transfer on basis of said incidents and that too, after internal inquiry, without no further action to be treated as punitive – It was open to Respondents to proceed with disciplinary proceedings and take appropriate action as against all those who were responsible for ugly incident, if found responsible – To transfer person on basis of incident without proceeding to conduct inquiry was bad – Order of revocation of suspension as well as order of transfer not personally served on affected party – Unless order was communicated to party, it remains to be uncommunicated order – Such order did not take effect at all – Transfer from one division to another on basis of uncommunicated revocation of suspension was punitive in nature – Petitioners had been treated differently from another employee, alleged to have been involved in incident – To treat persons similarly situated dissimilarly, offends Article 14 of Constitution – Article 14 not only states equality before Law, but also equal protection of Law – Order of Tribunal, set aside – Order of transfer of Petitioners, set aside – Petitions allowed. [*D. Prithiviraj v. Union of India*]

(V. LAKSHMINARAYANAN, J.)
2023-II-LLJ-585 (Mad) LNINDORD 2023 MAD 970