



**AIBEA's**

# **LEGAL NEWS**

**Q – 1      Jan. Mar. 2024**



**ALL INDIA BANK EMPLOYEES' ASSOCIATION**



# LEGAL NEWS

From AIBEA

BULLETIN Q – 1  
Jan. – Mar. 2024

## JANUARY – 2024

### ACCIDENT IN COURSE OF EMPLOYMENT

**Benefits Due** – Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995, Section 47 – Claim of Legal heir of employee who met with accident during course of employment was unresolved – Tribunal directed Petitioners to disburse benefits due – Whether, Respondents entitled for benefits as Commissioner had ordered that deceased employee not entitled to any benefit meant for persons with disabilities prior to date of issuance of Disability Certificate from the Medical Board – *Held*, order of Commissioner not revealed concomitant ingredients of adjudication – Act not contemplate adjudication at hands of Commissioner – Commissioner had not made any determination of rights of parties but merely closed complaint – Application for disbursement could not have estopped him from claiming benefits due under Act – Approved line of action of Tribunal in granting relief to in accord with Section 47 of Act with modification – Respondents entitled to salary arrears and other benefits due – Petition disposed of. [*Hindustan Organic Chemicals Ltd v. Lissamma James*]

(C. JAYACHANDRAN, J.)  
2024-I-LLJ-195 (Ker)  
LNIND 2023 KER 11

### APPLICABILITY OF ACT

**Apprentice or Workmen** – Apprentices Act, 1961 – Industrial Disputes Act, 1947, Sections 4(K), 25F and 25H – Tribunal held that Respondents fall within definition of workmen as defined under Act 1947 and termination of their services amount to violation of Section 25F and Section 25H of Act 1947, hence these petitions – Whether, provisions of Apprentices Act, 1961 or provisions of Industrial Disputes Act, 1947 will apply in present set of petitions – *Held*, Act of 1961 is special law and Act 1947 is general law, hence provision of Special Act i.e. Act of 1961 would prevail over provisions of Act 1947 – when language of apprenticeship agreement is plain and unambiguous – State Government,

not competent to make reference under Section 4(K) of Act 1947 – Tribunal miserably failed while making award when specific plea was raised about maintainability of proceedings – Dispute under Act 1961 cannot be treated as industrial dispute as provisions of labour law are not applicable in view of Section 18 of Act 1961 – Petitions allowed. [*IOCL v. Shri Narendra Singh Shekhawat*]

**(ANOOP KUMAR DHAND, J.)**  
**2024-I-LLJ-104 (RAJ)**

## **DENIAL OF PROMOTION**

**Disciplinary Proceeding** – Petition filed by Petitioner seeking for promotion to the higher post from the date of his immediate juniors got such promotion and to grant him all consequential service benefits – Whether, Petitioner entitled for promotion – *Held*, having considered Petitioner for promotion, the result could not have been withheld awaiting conclusion of disciplinary proceeding – Trial of vigilance proceeding was moving in snail's pace – Unexplained prolongation of criminal trial violates constitutional rights of accused – Prayer of Petitioner regarding consideration for promotion is his time bound right and delay at the instance of the State would cause serious deprivation from his rightful claim – State directed to give promotion to Petitioner – Petition disposed of. [*Nihar Ranjan Choudhury v. State of Odisha*]

**(SIBO SANKAR MISHRA, J.)**  
**2024-I-LLJ-128 (Ori)**

## **DISCIPLINARY PROCEEDINGS**

**Termination of Doctor** – Post Graduate Medical Education Regulations, 2000 – Staff Service Rules, Christian Medical College, Vellore, Rule 4.16 – Petition filed by Petitioner against his termination from college in departmental proceedings – Whether, student allotted to Medical College under NEET qualifications by the National Medical Commission and expert statutory body would be treated as permanent employee during period of training – *Held*, in the absence of any criminal offence or ragging which debars the person from continuing the study as per the statutory rules, merely on some bald accusations, the student selected through NEET, his study cannot be dispensed with and he cannot be terminated – As there is no employer and employee relationship merely on the basis of stipend being paid by the college, the same cannot be taken as a salary paid by the college – It is a mandate as per the regulations referred above to pay the stipend by the concerned college – The entire disciplinary proceedings and termination order stand quashed and the Respondents shall permit the Petitioner to complete the M.Ch. Course – Petition allowed. [*Dr. F. Biravinth Solomon v. CMC*]

**(N. SATHISH KUMAR, J.)**  
**2024-I-LLJ-71 (Mad)**  
**LNINDORD 2023 MAD 2677**

## **DISMISSAL**

**Burden of Proof** – Petitioner dismissed from service by Respondent-Corporation for misconduct of embezzlement – Whether, dismissal order could be sustained in absence of leading evidence produced by establishment to prove their case – *Held*, bounden duty of Establishment to prove their case before Inquiry Officer by leading evidence – Oral testimony in inquiry involving imposition of major penalty was salutary requirement – No witness examined – Findings recorded on basis of idle papers held flawed – Establishment not relieved of their burden to prove their case – Contentions raised on behalf of Petitioner left open to be examined – Impugned order, quashed – Respondents directed to undertake inquiry afresh – Petition allowed. [*Suresh Babu v. State of U.P.*]

**(J.J. MUNIR, J.)**  
**2024-I-LLJ-121 (All)**  
**LNINDORD 2023 ALL 625**

## **INDUSTRIAL DISPUTE**

**Strike Notice** – Respondent no. 3-ex workmen issued strike notice to Petitioner with charter of demands – Respondent no. 1 held that industrial dispute existed between parties and referred matter to Respondent no. 2-Tribunal – Whether, reference made by Respondent no. 1 to Respondent no. 2, sustainable – *Held*, Industrial Tribunal need to consider oral and documentary evidence placed before it to decide nature of employment of workers – Reference made by Respondent no. 2 not unjust – Respondent no. 2- Tribunal directed to conduct due enquiry by according opportunity of adducing evidence and advancing arguments – Petition dismissed. [*ONGC v. Union of India*]

**(U. DURGA PRASAD RAO, J.)**  
**2024-I-LLJ-138 (AP)**  
**LNINDORD 2023 AP 1**

## **PAYMENT OF BONUS**

**Ultra Vires** – Constitution of India, 1950, Article 14 – Payment of Bonus (Amendment) Act, 2015 – Payment of Bonus Act, 1965, Sections 2(13) and 12 – Petitioner-Company challenged validity of retrospective applicability of Act 2015 – Whether, Act 2015 was ultra-vires Constitution – *Held*, object of Act 2015 for enhancement of ceiling provided under Section 2(13) of Act 1965 – Amendments made in Sections 2(13) and 12 of Act 1965 – No dispute with respect to legislative competence of Union in bringing amendment – Act 1965 provided for payment of bonus on basis of profit or production – Act 2015 sought to bring in more employees under its

ambit by raising *quantum* of salary on which bonus would be payable – Retrospective operation only for one financial year – Welfare legislation could not be termed to be unduly oppressive or confiscatory – Act 2015 not created unforeseeable financial burden for past period – No case made out for interference in Act 2015 to hold same *ultra-vires* – Application dismissed. [*Magadh Sugar and Cenergy Ltd v. Union of India*]

**(PARTHA SARTHY, J.)**  
**2024-I-LLJ-81 (Pat)**

## **REFUSAL TO REFERENCE**

**Delay in raising dispute** – Industrial Disputes Act, 1947, Section 10(1) – Petitioner-workman was terminated from service – Appropriate Government refused to refer dispute to Labour Court on ground of delay by Petitioner in raising dispute and treated it as Stale Claim – Whether, appropriate Government could refuse to make Reference under Section 10 of Act on ground of delay and latches – Whether the Government can take up the role of Adjudicating Authority while deciding the question as to whether a Reference be made or not – *Held*, no limitation prescribed for raising demand by workman – When dispute become stale would depend upon facts of each case – No limitation prescribed for reference of disputes to Industrial Tribunal – Not open for Appropriate Government to travel beyond intention of the legislature – Not open for Appropriate Government while exercising powers under Section 10(1) of Act to decide it as stale claim – Delay itself could not be ground for refusing to make Reference – Impugned order, set aside – Petition disposed of. [*Gopiram Yadav v. State of Rajasthan*]

**(ANOOP KUMAR DHAND, J.)**  
**2024-I-LLJ-150 (RAJ)**

## **REINSTATEMENT**

**Entitlement to Back Wages** – Labour Court held termination of Petitioner to be illegal and directed reinstatement, however, has not awarded back wages to Petitioner, hence this petition – Whether, Petitioner could be granted full back wages from the date of termination till the actual reinstatement – *Held*, Respondent no. 3 never challenged award – When termination order was set aside, the consequence would be order of termination was never passed – Reinstatement in service with full back wages was the natural consequence of setting aside the order of termination – Labour Court ought to have granted back wages – Impugned award modified – Petitioner entitled to back wages – Petition allowed. [*Vidya Rawat v. State of U.P.*]

**(PIYUSH AGRAWAL, J.)**  
**2024-I-LLJ-86 (All)**

## RETIRAL DUES

**Old Pension Scheme** – Impugned order passed by Corporation denying to make payment of pension and gratuity to Petitioner – Whether, Petitioner was entitled to retiral dues – *Held*, Petitioner treated as regular employee of Respondent-Corporation under regular pay-scale – Respondents not justified to issue notices to Petitioner to receive pension as per New Pension Scheme – Such option could not be sought from Petitioner – Petitioner appointed way back was part of Old Pension Scheme – Action of Respondents of withholding pension, unjustified – Petitioner entitled to get pension and gratuity as per Old Pension Scheme with interest – Petition allowed. [*Ramesh Kumar v. State of Rajasthan*]

**(ANOOP KUMAR DHAND, J.)**  
**2024-I-LLJ-135 (RAJ)**

## TERMINATION

**Notice** – Industrial Disputes Act, 1947, Section 25 – Service of workman-Appellant terminated – Tribunal directed employer to reinstate workman – Single Judge set aside findings returned by Tribunal – Whether, Tribunal justified in directing reinstatement of workman – *Held*, on account of continuous absence of workman service terminated – Once workman admitted factum of non-joining at transferred station no requirement for employer to serve notice – Section 25 of Act provided before retrenchment notice required to be issued to workman – Notice issued prior to passing of termination order – Tribunal ought not have straightway ordered for reengagement of workman on account of inordinate delay in raising demand – Tribunal ought to have directed employer to pay compensation instead of reinstatement – Error of law apparent on face of record could be corrected by writ Court but not error of fact – No specific notice under Section 25 of Act issued – Prior termination, workman was continuously working with employer – Workman entitled to compensation – Appeal disposed of. [*Nain Sukh v. HP State Co-op*]

**(SANDEEP SHARMA, J.)**  
**2024-I-LLJ-164 (HP)**

**Reinstatement** – Industrial Disputes Act, 1947, Section 2(s) – Termination of services passed against Respondent No. 1 – Labour Court directed reinstatement of Respondent no. 1, hence this petition – Whether, Labour Court justified in directing reinstatement to Respondent no. 1 – *Held*, where services of employee terminated without resorting to disciplinary inquiry and the termination is challenged, employer has right to justify termination by establishing misconduct – Task lies before adjudicator to decipher dominant nature of duties and remove gloss – Not seem to be any semblance of supervisory duty discharged by Respondent No. 1 – Respondent No. 1 rendered technical skilled service – Duties discharged by Respondent No. 1 fall within definition of

workman under Section 2(s) of Act – Labour Court committed no error in returning finding that Respondent No. 1 was workman – Incumbent upon employer to hold disciplinary enquiry to establish misconduct or adduce evidence before Labour Court – Termination order held illegal – Reinstatement in service, justified – Petitioners-employer directed to pay 70% of backwages – Petition partly allowed. [*S.K. International v. Ashok Tanaji Tambe*]

**(N.J. JAMADAR, J.)**  
**2024-I-LLJ-222 (Bom)**

## FEBRUARY

### APPOINTMENT

**Validity of Show Cause Notice** – Government Servants Conduct Rules, 1960, Rule 48 – Petitioner’s appointment as Vice Chancellor of University temporarily by Chancellor resulted in initiation of disciplinary action by Government and show cause notice was issued as a prelude to disciplinary action pointing out that Petitioner has violated Rule 48 of Rules 1960 – Whether, show cause issue was sustainable – *Held*, appointment of Petitioner by Chancellor, who is the Governor of Kerala, is by invoking statutory provisions – Rule 48 of the UGC Regulations does not contemplate any violation of Government servant’s conduct if such an appointment is made through the process of law – Rule only contemplates taking up of employment by the Government servant by his own volition – If proper interpretation of law is accorded, it could be seen that show cause notice is misconceived and legally unsustainable – The Government servant can only be proceeded for disciplinary action against violation of any existing rules or law – If the appointment is made invoking statutory provisions in another service, and not based on the individual application of the Government servant, that will not amount to violation of Rule 48 – Based on the interpretation of Rule 48, show notice is unsustainable – Petition allowed. [*Dr. Ciza Thomas v. State of Kerala*]

**(A.MUHAMED MUSTAQUE, J.)**  
**(B.2024-I-LLJ-317 (Ker))**

### EX-PARTE AWARD

**Validity of Petition under Article 226** – Constitution of India, 1950, Articles 226 and 227 – Petitioner-firm claimed that private Respondents who were working as piece meal workers on need basis in factory were not regular employees – In earlier proceedings, Tribunal without issuing any notice to Petitioner-firm initiated ex-parte

proceedings and finally an ex-parte award was passed against Petitioner-firm – Whether, petition under Article 226 of Constitution, maintainable – *Held*, grounds which have been urged by Petitioner-firm that private respondents does not fall in the definition of workmen as they were engaged by Petitioner-firm as piecemeal workers and were not regularly paid by Petitioner-firm is an issue which cannot be adjudicated by this Court by exercising the writ jurisdiction more particularly, when the Tribunal has dealt all the issues on basis of evidence adduced and documents relied by private respondents – Petitioner-firm after having accepted award which was in the active knowledge of the firm has slept over the matter for two years and ten months gladly and voluntarily without any demur and after having accepted the same for more than two years, the Petitioner-firm is estopped under law to question the same belatedly which is a matter of afterthought – Petition dismissed. [*Vishwakarma Gun Works v. Industrial Tribunal Court*]

**(WASIM SADIQ NARGAL, J.)**  
**2024-I-LLJ-455 (JNK)**

## **INDUSTRIAL DISPUTE**

**Pensionary Benefit** – Settlement – Industrial Disputes Act, 1947, Section 18(1) – Industrial Disputes (Central) Rules, 1957, Rule 58 – Petitioner was made to retire prematurely from service with effect from 28.02.2013 considering his date of birth as 16.02.1953, whereas his date of birth as per matriculation certificate was 31.12.1953 and later he was allowed to resume his service – On petition filed by Petitioner/Respondent for release of salary and other dues for intervening period, Single Judge directed Appellant to treat age of Petitioner as mentioned in matriculation certificate with all consequential benefits, hence this appeal – Whether, impugned order passed by Single Judge, sustainable – *Held*, Respondent had appeared in conciliation proceeding, wherein, settlement was arrived at with acceptance of workman that he will not claim back wages if he will be reinstated in service – Aforesaid settlement having been entered said to be in view of section 18(1) of Act, has got statutory fervor – The moment settlement has been arrived at in between Respondent and management and same acted upon by Respondent on the order of reinstatement passed by management and thereafter, it is not available for the Respondent to negate the second part of the settlement, whereby and whereunder, he himself has acceded not to claim the back wages for the intervening period – Impugned order, set aside – Appeal allowed. [*Bharat Coking Coal Ltd v. Brij Nath Pandey*]

**(SUJIT NARAYAN PRASAD, J.)**  
**2024-I-LLJ-309 (Jhar)**  
**LNINDU 2023 JHAR 206**



## SUSPENSION

**Conviction in Criminal Case** – Kerala Police Act, 2011, Section 101(8) – Respondent suspended from service for being convicted in criminal case – Tribunal set aside disciplinary proceedings and penalty imposed on him – This was done taking note of fact that Respondent has been acquitted in the criminal case by Appellate Court – Whether, order of Tribunal, sustainable – *Held*, further enquiry as to misconduct not possible on same set of facts under criminal proceedings as per Section 101(8) of Act – Charge based on criminal offence – On his acquittal, departmental proceedings would come to end as no further proceedings could be initiated – When there was no explicit conduct disparaging dignity of public servant, not within province of Government to probe into private affairs of Government servant – Adultery could not be *per se* subject matter of disciplinary enquiry on ground of misconduct – Tribunal justified in setting aside impugned order – Petition dismissed. [*State of Kerala v. P.V. Kuryan*]

**(A. MUHAMED MUSTAQUE, J.)**  
**2024-I-LLJ-304 (Ker)**  
**LNIND 2023 KER 13**

**Judicial Custody** – Petitioner suffered suspension from service on ground that he was in judicial custody on criminal charge – Whether, Respondent nos. 1 and 3 justified in issuing impugned suspension order merely on premise that Petitioner had suffered custody in relation to FIR on motor vehicle accident – *Held*, Respondent nos. 1 and 3 not correct to hold that merely because Petitioner involved in motor vehicle accident to be guilty of offence involving moral turpitude – In motor vehicle accident no question of *mens rea* – Petitioner not involved in offence involving moral turpitude – Order impugned patently illegal – Petition allowed. [*Dr. S.D. Nikam v. Gokhale Education Society*]

**(G.S. KULKARNI, J.)**  
**2024-I-LLJ-409 (Bom)**  
**LNIND 2023 BOM 881**

## TERMINAL BENEFITS

**Interest on delayed payment** – Constitution of India, 1950, Article 226 – Tamil Nadu Pension Rules, 1978, Rule 45-A – 1<sup>st</sup> Respondent passed order wherein interest for belated disbursement of terminal benefits was granted only for limited period, hence this petition by retired Engineer of Highways Department – Whether department liable to pay interest for belated disbursement of terminal benefits – *Held*, State could not take its own time to conclude disciplinary proceedings and

thereafter, refuse to grant interest for belated disbursement of terminal benefits which were withheld citing pendency of disciplinary proceedings – Rule 45-A(1-A)(c) could have application only in cases where disciplinary enquiry had been completed at least within period of one year or delay beyond said period was attributable to *delinquent* – At every stage of proceedings, authorities had protracted proceedings and caused great prejudice to Government servant – Government had withheld more than Thirty lakh for period of more than five years for recovering sum of just Three thousand from Petitioner – In all cases where delay was attributable to department, they were liable to pay interest three months after date of retirement of Government servant – Respondents directed to pay interest from date which was after three months from date of his retirement till date on which terminal benefits were released excluding sum which had already been paid – Interest shall be calculated at rate as specified in Rule 45-A – Petition allowed. [*K.Ramasubbu v. Additional Chief Secretary*]

**(R. VIJAKUMAR, J.)**  
**2024-I-LLJ-340 (Mad)**

## **TERMINATION**

**Eligibility Criteria** – Constitution of India, 1950, Articles 14 & 16 – Applicants-Petitioners letter of appointment was cancelled by Board in accordance with court order and their services were terminated – Division Bench observed that basic document, that is, TET certificate was not annexed or disclosed in petition and accordingly, not inclined to interfere with order passed by this Bench, however, Division Bench permitted the said candidates to approach this Bench for modification of order with convincing materials – Whether, ineligible applicants acquired permanent status in service as they have served for long – *Held*, eligibility criteria mentioned that candidate should be TET qualified – Applicants being not TET qualified not possessed TET certificate – Appointment in public recruitment made after conducting regular selection process – Applicants ineligible to apply for such job – Deliberate incorporation of incorrect data in application from thereby misrepresenting facts and figures amounted to fraud – Fraud vitiates everything as it goes to very root of issue – No legal right accrues in favour of employee if appointment *de hors* provisions of law – Permitting ineligible candidate to hold on to post contrary to Articles 14 and 16 of Constitution – Employee could not claim to hold any status in service if it later detected that initial appointment was bad – Order of termination rightly issued – Applications dismissed. [*Ramesh Malick v. State of West Bengal*]

**(AMRITA SINHA, J.)**  
**2024-I-LLJ-320 (Cal)**  
**LNIND 2023 CAL 3214**

**Incompetent Authority** – Petitioner’s services were terminated on immediate basis, hence this petition – Whether, Petitioner’s termination letter issued by incompetent authority – *Held*, courts shall ensure that executive and legislature bodies act within powers enshrined upon them by Constitution as well as the various statutes governing them – In case there is employee of State or any public authority which has been dismissed/terminated from his service without following due process of law then Courts under their writ jurisdiction can declare act of dismissal to be nullity – As per MOA, evident that Respondent no. 1 is not competent authority to direct termination of Petitioner – Competent authority is Governing Council of Respondent no. 2 which is empowered to appoint or terminate medical officers employed at Respondent no. 2 hospital – Impugned order set aside, on grounds that Respondent no. 1 is not competent authority empowered to take such decision – Petition allowed. [*Dr. Praveen Singh v. Govt of NCT of Delhi*]

**(CHANDRA DHARI SINGH, J.)**  
**2024-I-LLJ-443 (Del)**  
**LNINDORD 2023 DEL 3**

**Long Absence** – Tribunal confirmed that administration was justified in terminating Petitioner as Petitioner had never informed about his ailment and never sought for leave – Whether, this was case of “termination of service” as contended by Petitioner or a case of “voluntary abandonment of service” as contended by Respondents – *Held*, Petitioner without any intimation has kept himself away from service for long period of nearly 17 years – Claim of Petitioner that he was seeking extension of leave remains unsubstantiated – Long absence of nearly 17 years from service without any proper intimation or correspondence is nothing, but, abandonment of service – Petitioner deemed to have abandoned his services with Respondents and not entitled to get any benefits – Tribunal considered issue in right perspective and passed reasoned order – Petition dismissed. [*B. Suresh v. Chief Engineer*]

**(SHOBA ANNAMMA EAPEN, J.)**  
**2024-I-LLJ-298 (Ker)**  
**LNIND 2023 KER 12**

**Misconduct** – Respondent No. 1 terminated from service for misconduct – Tribunal held that findings of Enquiry Officer were *perverse* – Whether, Tribunal rightly held that findings of Enquiry Officer were *perverse* – *Held*, none of the witnesses have seen Respondent No. 1 indulging in unnatural act – Petitioner-Corporation ought to have led evidence of security guards about presence of dog – Evidence of witnesses, contradictory – Respondent No. 1 had boils on both his legs few days prior to incident – Clear from evidence of witnesses and considering his health problems, Respondent No. 1 could never have indulged in alleged incident – Required by Petitioner to send Respondent No. 1 for medical test – No record about stray dog

entered premises in log book – No reason to interfere with the findings returned by the Tribunal that findings of the Enquiry Officer were found to be *perverse* – Petition dismissed. [*BPCL v. Gulab Genu Gadankush*]

**(MILIND N. JADHAV, J.)**  
**2024-I-LLJ-326 (Bom)**

**Misconduct** – Workman-Respondent No. 2 dismissed from service for misconduct Labour Court held that domestic enquiry against workman was illegal and arbitrary and that the workman was entitled to continue in service with effect from date of his termination alongwith all consequential benefits, hence this petition – Whether, impugned order passed by Labour Court, sustainable – *Held*, no material was placed before Labour Court in support of charge – Incumbent upon Petitioner to place evidence indicating fresh material available which could prove charges – Merits of charges have been examined by Labour Court itself, and finding has been returned that the charges were not proved from the material available on record, therefore, it was necessary for Petitioner to demonstrate that there was other evidence which was available but could not be produced during domestic enquiry, and that evidence was relevant and necessary to bring home the charges – No infirmity in impugned order – Petition dismissed. [*Nicholas Piramal India Ltd v. Presiding Officer*]

**(ALOK MATHUR, J.)**  
**2024-I-LLJ-346 (All), LNIND 2023 LUCK 353**

**Moral turpitude** – Offence attract principles or considerations of right and wrong action or good and bad character capable of being judged as good or evil or intention involving general principles of right conduct having relation to what Society recognizes – Exclude offences which do not involve and attract morality. [*Dr. S.D. Nikam v. Gokhate Education Society*]

**(G.S. KULKARNI, J.)**  
**2024-I-LLJ-409 (Bom)**  
**LNIND 2023 BOM 881**

## **WORKMEN/EMPLOYEE**

**Salesmen** – Industrial Dispute Act, section 2(s) – Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971, Section 3(5) – Labour Court observed salesmen as workmen under provisions of Industrial Disputes Act and 'employees' under MRTU & PULP Act and held complaints to be maintainable – Whether complainants, who are employed as salesmen in various retail outlets of Bata, could be treated as workmen under provisions of ID Act and consequently 'employee' under provisions of MRTU & PULP Act – *Held*, employees who are engaged purely on sales promotion activities cannot be treated as 'workmen' under

Section 2(s) of the ID Act – Definition of term sales promotion employee makes reference to 'establishment' – Definition of term Sales Promotion Employee is restricted only to establishment engaged in pharmaceutical industry – Every Sales Promotion Employee as defined under Section 2(d) of SPE Act 1976 automatically become 'employee' within meaning of MRTU & PULP Act and is entitled to file complaint under Section 28 of that Act before Labour Court or Industrial Court – Labour Court correctly answered issue about status of salesman employed in retail outlets of Bata as workman – Court do not find any patent error committed by Labour Court in holding salesmen employed by Bata in its retail outlets as workmen within meaning of Section 2(s) of ID Act – Considering nature of job, instead of directing reinstatement and payment of any back wages, complainants are awarded lump-sum compensation – Petitions disposed of. [*Kiran P. Pawar v. Bata India Ltd*]

**(SANDEEP V. MARNE, J.)**  
**2024-I-LLJ-423 (Bom)**  
**LNIND 2023 BOM 841**

## MARCH

### DISCIPLINARY ACTION

**Applicability of Statute** – Industrial Employment (Standing Orders) Act, 1946, Sections 10 & 13B – Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCA Rules) – Disciplinary action initiated against Respondent for giving false declaration – High Court allowed Petition of Respondent by setting aside order passed by Tribunal which upheld initiation of disciplinary proceedings by Department – Whether, disciplinary proceedings against Respondent-workman could be initiated under CCA Rules, 1965 and not under Standing Orders – *Held*, standing order has statutory mandate – CCA Rules are general service rules applicable to all employees – Standing orders cover whole range of activities of work related to workman in industrial establishment – Respondents come under definition of workman – Appointment orders clearly stated that their service conditions would be governed under CCA Rules – Section 13B of Act declares that to those workmen in industrial establishment to whom CCA Rules applicable provisions of Act not apply – Special rules would override general – Department failed to place modification made under Section 10 of Act to show that Stading Orders would not be applicable to Respondent – Standing Orders being in nature of special Rules override any other general Rule including CCA Rules – High Court order, upheld – Appeals dismissed. [*Union of India v. K. Suri Babu*]

**(SUDHANSHU DHULIA, J.)**  
**2024-I-LLJ-497 (SC)**  
**LNIND 2023 SC 671**

## **DISCIPLINARY PROCEEDINGS**

**Defects** – Petition filed to quash order passed by 2<sup>nd</sup> Respondent, discharging Petitioner from service and also order of 1<sup>st</sup> Respondent, confirming order of 2<sup>nd</sup> Respondent – Whether Petitioner could be reinstated in service with all consequential service benefits – *Held*, only lacuna in proceedings of Disciplinary Authority was that after receipt of enquiry report, Disciplinary Authority should have acted like Postman by merely forwarding copy of report to *delinquent*, calling for explanation and thereafter decide whether charges were proved or not – Disciplinary Authority stated that he had accepted findings of Enquiry Officer and thereafter, decided to forward same to Petitioner, which was *erroneous* and unheard in law – Matter remitted to Disciplinary Authority to rectify defects from where it had happened, *viz.*, to forward enquiry report, call for objection from *delinquent* and thereafter, decide as to whether charges were established or not and take decision depending upon satisfactory explanation given by Petitioner – As Petitioner was dismissed from service and only now order of dismissal was set aside, period was to be treated as without employment and she might be treated to be under suspension from today and be paid accordingly – Petition allowed. [*M. Ponnichitra v. Registrar General*]

**(S. VAIDYANATHAN, J.)**  
**2024-I-LLJ-545 (Mad)**  
**LNINDORD 2023 MAD 2882**

## **FAMILY PENSION**

**Cohabitation** – Petitioner sought for family pension after death of her husband – Her request for family pension returned by Board – Whether, Petitioner entitled to family pension as she was living with deceased as man and wife – *Held*, after death of first wife relationship between Petitioner and deceased employee continued for long – Petitioner gave birth to children deemed to have been living with deceased as man and wife – Cohabitation between them not denied by Board – Impugned order, quashed – Respondent no. 2 directed to disburse family pension to Petitioner from date of death of deceased – Petition allowed. [*V. Ganthimahi v. Internal Audit Officer*]

**(V. LAKSHMINARAYANAN, J.)**  
**2024-I-LLJ-667 (Mad)**  
**LNINDORD 2023 BMM 1515**

## **PAYMENT OF SALARY**

**Bona fide Employee** – Salaries of Appellants were stopped – Single Judge and Division Bench declined any relief to Appellants hence these appeals – Whether, State justified in abruptly and without anything more, stopping the salary – *Held*,

Appellants were not given any opportunity and even the inquiry held behind back of Appellants – No findings of collusion or blameworthiness against them for alleged manipulation – With no finding of guilt and no material against them, salaries had been stopped – State had no proof of commission of any malpractice by the Appellants – The State approved their appointments, and the approval order till date has not been cancelled – Appellants were *bona fide* Applicants from open market – It would be a travesty of justice if relief denied to Appellants – Impugned judgments, set aside – State directed pay salaries of Appellants – Appeals allowed. [Radhey Shyam Yadav v. State of U.P.]

**(K.V. VISWANATHAN, J.)**  
**2024-I-LLJ-512 (SC)**  
**LNIND 2024 SC 4**

## **RETIREMENT AGE**

**Physical training instructor-** Jawaharlal Nehru Krishi Vishwavidyalaya Act, 1963, Section 10 – Jawaharlal Nehru Krishi Vishwavidyalaya Statute, 1964, Statutes 11 and 32 – Appellant, working as sports officer/physical training instructor (PTI) in College under 1<sup>st</sup> Respondent/University filed petition challenging order of retirement on eve of his attaining age of 60 years – Single Judge allowed petition holding that Appellant, fell under definition of “teacher” and was entitled to retire at age of 62 years, at *par* with teachers but Division bench set aside order of Single Judge, hence this appeal – Whether Appellant, PTI/Sports Officer would come within definition of “teacher” and thereby be entitled to continue in service till completion of 62 years – *Held*, definition “teacher” was inclusive in nature and not just confined to Professor, Associate Professor or Assistant Professor, as defined in Statute 32 – Word “teacher” encompasses one who was enjoined to impart instructions and/or conduct and guide research and/or extension programmes – Appellant while discharging his duties was required to impart instructions relating to rules and practices adopted for various categories of sports – Appellant required to impart different skill sets and playing techniques depending on nature of sport, for training students - Merely because Appellant was not expected to conduct classes within four walls of College, as in case of Professor/Associate Professor/Assistant Professor, would not by itself make him ineligible for being treated as teacher for all practical purposes in as much as most sports require training in open spaces/fields/courts *etc.* – Appellant, who was discharging duties of PTI/Sports Officer, would fall within definition of “teacher” and would have been entitled to be continued in service till completion of 62 years of age – Appellant shall be entitled to all consequential and monetary benefits including, arrear of salary, *etc.*, had he continued in service upto age of 62 years – Retiral benefits shall also be computed on presumption that his age of retirement was 62 years – Appeal allowed on terms. [P.C. Modi v. Jawaharlal Nehru Vishwa Vidyalaya]

**(HIMA KOHLI, J.)**  
**2024-I-LLJ-526 (SC)**

## TERMINATION

**Misconduct** – Model Standing Orders, Clauses 24(d), 24(k) & 24(l) – Respondent-workman terminated from service due to misconduct – Labour Court concluded that Enquiry conducted was illegal – Whether, Labour Court order, sustainable – *Held*, posting of Facebook account and comments received clearly act of inciting hatred and passion against management – Clear from evidence two Facebook posts were indeed posted by Respondent – Such act clearly invoked hatred and passion to commit overt act – Misconduct committed by Respondent covered under clauses 24(d), 24(k) and 24(l) of Orders – Regulation of behavior of workman essential for peaceful conduct of industrial activity – Merely because no incident taken place could not be ground for discharging Respondent – Impugned order not sustainable – Enquiry conducted against Respondent fair and proper – Petition allowed. [*Hitachi Astemo Fie Pvt. Ltd v. Nirajkumar Prabhakar Rao Kadu*]

**(MILIND N. JADHAV, J.)**  
**2024-I-LLJ-656 (Bom)**  
**LNIND 2023 BOM 916**



## ALL INDIA BANK EMPLOYEES' ASSOCIATION

Central Office: PRABHAT NIVAS

Singapore Plaza, 164, Linghi Chetty Street, Chennai-600001

Phone: 2535 1522, 2535 8853

e mail ~ [chv.aibea@gmail.com](mailto:chv.aibea@gmail.com)

Web: [www.aibea.in](http://www.aibea.in)