

LABOUR LAW MONTHLY UPDATE

AUGUST 2024

DISCLAIMER

- This Presentation is meant for informational purpose only and do not purport to be advice or opinion, legal or otherwise, whatsoever.
- This is not intended to advertise services or solicit work through this monthly update.

Let's
take
a
tour

Amendments & Ordinance

Circulars and Notifications

Across the Globe

Did you know

Case Law

Compliance

Knowledge Corner



AMENDMENTS AND ORDINANCE

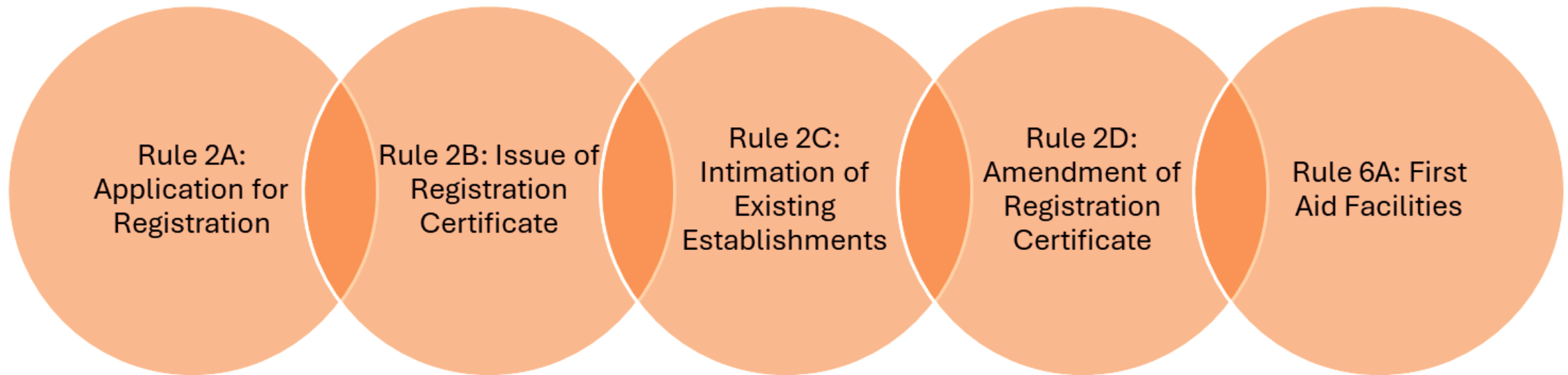
TAMILNADU SHOPS AND ESTABLISHMENT AMENDMENT ACT, 2023

Notification of effective date: 02.07.2024

TAMILNADU SHOPS AND ESTABLISHMENT RULES, 1948

Notification dated: 02.07.2024

ADDITION OF RULES TO THE DEFINITION CLAUSE (RULE 2)



OVERVIEW OF THE AMENDMENT

- Every application for registration can be submitted online in Form Y by paying Rs.100 via designated portal of the Labour Department.
- The Inspector must issue the registration certificate in Form Z within 24 hours of receiving the application.
- The employer of each establishment must submit the details of their establishment online using Form ZB to the Inspector.
- Applications to amend the registration certificate can be submitted online and upon receiving the same, the inspector will issue a revised registration certification online in Form Z within 24 hours.

CONTD...

- Every workplace must have atleast one First Aid Box for every 150 employees and the same should be easily accessible during working hours.
- Each box should have a red cross on a white background and must contain certain basic supplies for minor injuries and the same should be restocked promptly.

REVISIONS TO CURRENT RULES AND INTRODUCTION OF NEWLY ADDED FORMS

- Rule 18- Increase in maximum fee from Rs.15,000 to Rs.**20,000**.
- Form Z, ZA, ZB are added along with Form X

THE KARNATAKA COMPULSORY GRATUITY INSURANCE RULES, 2024

Notification Dated: 04.07.2024

TIME LIMIT FOR OBTAINING VALID INSURANCE POLICY

The specified time limit for employers of establishments that existed when the Gratuity Insurance Rules 2024 came into effect to secure gratuity insurance from an approved insurer shall be "six months" instead of "sixty days."



Circulars and Notifications

MINISTRY OF LABOUR AND EMPLOYMENT

Notification Dated: 10.07.2024

EMPLOYEES' STATE INSURANCE ACT, 1948

- The provisions of the ESI Act has been extended to the following districts in in the State of **Manipur**
 - Bishnupur,
 - Senapati,
 - Ukhul,
 - Kangpokpi,
 - Churachandpur, and
 - Thoubal .
- This implementation will bring the specified parts of the Employees' State Insurance Act into force in these areas, aiming to extend the benefits and regulations outlined in the Act to the specified districts.

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

Notification dated: 25.07.2024

Rights of Persons with Disabilities (Amendment) Rules, 2024

- A draft amendment to the Rights of Persons with Disabilities Rules, 2017, was published on February 1, 2024, with public feedback invited until March 5, 2024. The amendment will take effect upon its publication in the Official Gazette.
- The key change is the addition of a new clause to Rule 15(1), which includes **Accessibility Guidelines for Higher Education Institutions** as specified in a January 19, 2024, notification from the Department of Higher Education.

EMPLOYEE'S STATE INSURANCE CORPORATION

Notification Dated: 02.07.2024

Clarification Regarding Correction in Date of Birth of Insured Persons

- Corrections or updation to the date of birth for insured persons and their family members/dependents shall be made following para 1.73 of the ESIC branch office manual.
- The individual requesting the update must be asked to appear before the Medical Referee, who will be consulted to determine if the revised age aligns with the person's age and condition.
- Such a change may be accepted if the insured person applies for it prior to any accident that results in permanent disablement.

QUIZ!

Can an individual workman raise an industrial dispute under Section 2(k) of Industrial Disputes Act 1947 ?

☐ Yes

☐ No



ACROSS THE GLOBE

California mandates Workplace Violence Prevention Plan

- Californian Employer's are required to adopt and implement a Workplace Violence Prevention Plan (WVPP).
- Covered employers must maintain either as a stand-alone plan or as part of their Injury and Illness Prevention Plans under the new Labour Code.
- Employers are also required to administer training to employees on WVPP.
- This initiative aims to enhance workplace safety and reduce incidents of violence, emphasizing the importance of pre-employment screening to identify potential risks.

United Kingdom introduces Code of Practice on Dismissal and Re-engagement (Fire & Re-Hire)



- The Code of Practice on (Dismissal and Re-engagement) Order, 2024 came into effect for England, Wales and Scotland on 18th July 2024. This Code provides Employers with guidance to follow when proposing to make changes to the Employees' contractual terms and conditions.
- The Code does not apply where an employer dismisses an Employee on the grounds of redundancy. While the Code does not dismiss the use of dismissal and re-engagement (fire and rehire), it identifies it as a last resort. Employers are encouraged to ensure that they engage in meaningful consultation with employees and avoid raising the possibility of dismissal unreasonably early or using it as a threat. The Employment Tribunal may also award an uplift of 25% in compensation if the employers have failed to comply with the Code of Practice.





The Telangana Government has proposed a draft policy for Gig-workers with respect to Minimum wages and Maternity Benefits.





**The Regional Provident Fund Commissioner, EPFO Vs The
President Officer, CGIT
W.A(MD).No.298 of 2024**

The Regional Provident Fund Commissioner, EPFO Vs The President Officer, CGIT W.A(MD).No.298 of 2024

- An order under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was passed against the Management on December 26, 2003 levying damages.
- The Management appealed to the Appellate Tribunal, which, on March 3, 2009, limited the damages to 15% per annum. The Madurai Bench of High Court of Madras upheld this decision. The Regional Provident Fund Commissioner, Madurai, has filed an appeal challenging this order.
- The Appellant contended that the Appellate Tribunal and the Single Judge of the High Court failed to consider the amendment to Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, which took effect on September 26, 2008.

CONTI.

- The Division bench of Madras High Court in **Laven Techno blend Limited, formerly known as M/s. Coimbatore Popular Spinning Mills Ltd., Tirupur District Vs. Regional Provident Fund Commissioner, Coimbatore and others, 2023-IV-LLJ-234**, held that after the establishment of the Tribunal in 1996 under Section 7-I of the EPF Act, aggrieved person can now seek relief directly from the Tribunal. This process is more efficient than waiting for decisions from the Central Board of Trustees, which may be delayed. The Tribunal, led by a judicial officer, can decide on matters such as the waiver or reduction of damages imposed by the authority. Consequently, the Single Judge's order interfering with the Tribunal's decision was deemed incorrect, and the writ petition's order was overturned.

CONTI.

➤The Division Bench of Hon'ble High Court held that the Appellate Tribunal, serving as the Appellate authority has the authority to reduce or waive damages according to the scheme. In this case, the Tribunal appropriately reduced the damages to 15%. As a result, there is no illegality or error in the Tribunal's decision or in the writ Court's confirmation of this decision. The writ appeal is thus without merit and stands dismissed.

**The Regional Provident Fund Commissioner, EPFO Vs The President Officer,
CGIT
W.A(MD).No.298 of 2024**



**THE MANAGEMENT OF NWKRTC, GADAG DIVISION VS.
MANJUNATH., 2024:KHC-D:6231., DATED 05.04.2024**

THE MANAGEMENT OF NWKRTC, GADAG DIVISION VS. MANJUNATH., 2024:KHC-D:6231., DATED 05.04.2024

- Workman filed an application under Section 33C(2) of the Industrial Disputes Act seeking salary.
- The contention made on behalf of the employee was that as no approval application was filed seeking approval despite the pendency of a dispute, the employee is deemed to be in service and is also entitled to wages and interest.
- The Labour Court granted wages and interest @ 18% to the employee from the date of dismissal.
- The Corporation challenged the order of the labour court before the High Court.

THE MANAGEMENT OF NWKRTC, GADAG DIVISION VS. MANJUNATH., 2024:KHC-D:6231., DATED 05.04.2024

- The contention of the Corporation was not based on any pre-existing right, that the employee had all the liberty to file a petition under Section 33A incase of contravention of section 33(2)(b) of the ID Act and that the application is not maintainable just because an approval application has not been filed by the Corporation seeking approval of his dismissal from service.
- The High Court, upon evaluation of the settled principles of law held that as on the date of filing an application under Section 33C(2) of the ID Act, there was no employer - employee relationship between the parties, that the proceedings ought to have been an execution proceedings granting reliefs based on the pre-existing rights which is not the case of the employee herein. There has been no adjudication of claims of the employee and mere non filing of an approval petition would not render him all the benefits under the said section in the guise of non-existence of a dismissal order.



LAW ON WITHDRAWAL OF RESIGNATION



Can Resignation once given be withdrawn by the Employee?

SCENARIO I

Notice period in order of appointment is 60 days

Resignation given by Employee requesting to be relieved immediately.

Can the Employer relieve the Employee immediately?



SCENARIO II

Notice period in order of appointment is 90 days.

The Employee submits his resignation requesting to be relieved on the 90th day.

The employer does not give any written communication accepting the resignation.

The employee withdraws the resignation on 75th day. Is it permissible?



SCENARIO III

Notice period in order of appointment is 30 days.

Employee submits resignation on 1st March, requesting to be relieved on 31st March.

Can the Employer relieve the Employee on 20th March?



SCENARIO IV

Notice period in order of appointment is 90 days

The Employee submits his resignation, and Employer accepts resignation on the 100th day.

The employer has found an alternative person for the same role and he joins on the 60th day.

Can the Employee withdraw his resignation on the 70th day ?



**AMIT KUMAR GUPTA Vs INDIAN OIL
CORPORATION AND OTHERS ., LPA No 74 of
2017 DATED 30.01.2017., DELHI HIGH
COURT**

AMIT KUMAR GUPTA Vs INDIAN OIL CORPORATION AND OTHERS ., LPA No 74 of 2017 DATED 30.01.2017., DELHI HIGH COURT

- The employee tendered his resignation and the Management replied stating that his resignation cannot be accepted before settling certain dues.
- Subsequently, on 03.06.1999, the employee once again requested the Management to settle the dues and forward his resignation letter to the concerned authority.
- The employee stopped reporting for work from 10.06.99.
- The Management issued him the letter accepting his resignation on 24.09.1999.
- The employee sought to withdraw his resignation on 12.07.1999.
- However, he was informed by the Management that his resignation had already been accepted by the concerned authority.

AMIT KUMAR GUPTA Vs INDIAN OIL CORPORATION AND OTHERS ., LPA No 74 of 2017 DATED 30.01.2017., DELHI HIGH COURT

- Aggrieved by the Management's letter of acceptance dated 24.09.1999, the employee had preferred the writ petition which was dismissed by the Single Bench.
- The main contentions placed on behalf of the employee was that resignation did not become effective, that the employee had worked with the Management even after tendering his resignation and that he was in continuous negotiations with the Management regarding his resignation.
- The Bench, upon considering the communications concurred with the view of the Single Bench and held that there was no prospective date mentioned in the letter of resignation issued by the employee on 10.05.1999 and thus, it is to be construed that the resignation would take precedence with immediate effect.

AMIT KUMAR GUPTA Vs INDIAN OIL CORPORATION AND OTHERS ., LPA No 74 of 2017 DATED 30.01.2017., DELHI HIGH COURT

- Based on the said premise as well as the Service Rules of the Management, the following scenarios were derived by the Bench;
 - a) Employee leaving the service without undergoing the notice period of one month thereby entitling the Management to deduct from his salary the notice pay;
 - b) Resignation to take effect after the notice period., 09.06.1999.
- Either scenarios, the withdrawal of resignation by the employee transpired after the resignation became effective and further, the conduct of the employee having stopped reporting for work from 10.06.1999 could not be lost sight of by the Bench.
- In the circumstances, the request for withdrawal of resignation from service as dismissed by the Single Bench was confirmed by the Division Bench as well.

PRINCE MAURYA VS M/S CADILA HEALTHCARE LTD., W.P(C) No 1512 of 2020 DATED 18.07.2022

- The High Court, concurring with the findings of the Labour Court and by relying on the principle that termination before the expiry of the probation period does not amount to retrenchment, dismissed the writ petition filed by the employee as devoid of merits.

CHAND MAL CHAYAL VS. STATE OF RAJASTHAN, 2006 (10) SCC 258

CHAND MAL CHAYAL VS. STATE OF RAJASTHAN, 2006 (10) SCC 258

- The Employee in this case tendered his resignation on 27.01.1990 to contest in an election which was held in 1990 wherein he filed nomination as a candidate for election and subsequently withdrawn his nomination on 02.02.1990.
- The Employer however accepted his resignation on 28.01.1990 and the Employee was relieved on 29.01.1990.
- The Employee requested for re-employment which was rejected by the Employer and the same was challenged by the Employee. Aggrieved by the order of the Learned Single Judge, this appeal was preferred by the Employee.

CHAND MAL CHAYAL VS. STATE OF RAJASTHAN, 2006 (10) SCC 258

- This Court held that, it is a Settled principle of law that employee is entitled to withdraw resignation before acceptance.
- However, once the resignation is accepted, there is no jural relationship between the Employee and the Employer and the Employee cannot claim for withdrawal of the resignation nor reinstatement in the post.
- Hence, dismissed the appeal filed by the Employee.

SANJAY JAIN VS. NATIONAL AVIATION COMPANY OF INDIA LIMITED, 2019 (14) SCC 492

SANJAY JAIN VS. NATIONAL AVIATION COMPANY OF INDIA LIMITED, 2019 (14) SCC 492

- Standing orders of the company provides the right to an employee to resign from the service after giving notice period of 30 days.
- Acceptance of resignation is necessary only when resignation with request to be relieved with immediate effect/ anytime before expiry of notice period only.
- In the absence of any provision in standing order requiring acceptance of resignation, it is open to the employee to resign by serving the notice period.

NEW VICTORIA MILLS AND OTHERS VS. SHRIKANT ARYA 2021 (13) SCC 771

NEW VICTORIA MILLS AND OTHERS VS. SHRIKANT ARYA, 2021 (13) SCC 771

- Employees expressed interest for voluntary retirement In terms of the Modified Voluntary Retirement Scheme.
- Resignation was submitted on 12.07.2002 and the same was accepted on 28.05.2003 by the Employer.
- Acceptance of Resignation was communicated to employee on 02.06.2003 and he was asked to attend duties until the new cut off date.

NEW VICTORIA MILLS AND OTHERS VS. SHRIKANT ARYA, 2021 (13) SCC 771

- Employee vide letter 01.07.2003 submitted his request to withdraw the resignation.
- The Supreme Court held that postponement of cut off date and consequent payment made to employee was a matter of financial concern of the employer.
- Mere delay in relieving the employee from duties would not impact acceptance of the resignation and delay in disbursement of payments does not entitle the Employee to withdraw his resignation once made and accepted.

**SUMAN V. JAIN VS. MARWADI
SAMMELAN
2024 SCC ONLINE SC 161**

SUMAN V. JAIN VS. MARWADI SAMMELAN, 2024 SCC ONLINE SC 161

- The Employee in this case intimated his resignation on 25.03.2003 to the Employer stating his resignation with a prospective date which is 24.09.2003.
- The Employer vide a letter dated 08.04.2003 accepted the prospective resignation of the Employee stating that this acceptance will be "*final, binding and irrevocable*".
- The question before this Court was whether the withdrawal of resignation dated 25.03.2003 prior to the effective date i.e., 24.09.2003 is permissible and whether the letter of acceptance given by the Employer on 08.04.2003 is in accordance with law?

SUMAN V. JAIN VS. MARWADI SAMMELAN, 2024 SCC ONLINE SC 161

- The Supreme Court held that there is no rule or regulation which restrains withdrawal of resignation prior to the effective date and the letter of acceptance given by the Employer stating that it is "*final, binding and irrevocable*" is not in accordance with law and is unilateral as there was no implied contract or understanding and there was no prior consent was obtained from the Employee with regard to these conditional statements.
- Hence, it was held that a prospective resignation can be withdrawn at any time before its effective date in the absence of any legal, contractual or constitutional bar and directed the Employer to regularize the services of the Employee with all benefits.

INVOLUNTARY /FORCED/COERCED RESIGNATION AMOUNTS TO WRONGFUL TERMINATION



LexPOSH



LexPOSH

**E. Srinivasulu vs The State Of
Telangana And 7 Others on 8
February, 2024.**

W.P.No. 5029 of 2023

E. Srinivasulu vs The State Of Telangana And Others on 8 February, 2024 W.P.No. 5029 of 2023



LexPOSH

- The Petitioner was working as Police.
- The complainant was a sweeper in the same police station.
- The allegation of the Respondent was that the Petitioner forced her to watch porn videos on his phone and called her to a lodge.
- The Petitioner had not marked her attendance for a period of two months and forced her to meet his illegal demands.
- Based on the said complaint, an enquiry was conducted.
- The disciplinary authority concluded that the charges against the Petitioner was held to be proved and the punishment for removal from services were awarded.
- The same was challenged before the Telangana High Court.



LexPOSH

E. Srinivasulu vs The State Of Telangana And 7 Others on 8 February, 2024 W.P.No. 5029 of 2023

- The Court noticed that the complaint was given after 5 months of the alleged incident.
- The Respondent herself has turned hostile and denied all the allegation.
- Though the Respondent's statement was corroborated by one witness and the allegations were not substantiated with any evidence to the contrary.
- The Telangana High Court observed that the allegations of sexual harassment at workplace is not easy to be proved.
- The High Court held that since the Respondents failed to verify and substantiate the allegations and the Respondent herself has viled away from her complaint.

**E. Srinivasulu vs The State Of Telangana And
7 Others on 8 February, 2024 W.P.No. 5029 of
2023**

- The Respondents ought not to have held the charges as proved and imposed the punishment of 'removal from service.
- The same was set aside along with 50% of back wages and the period from the date of removal till the date of reinstatement, was directed to be considered as service for the purposes of pension and pensionary benefits.



LexPOSH

QUIZ!

Can an individual workman raise an industrial dispute under Section 2(k) of Industrial Disputes Act 1947 ?

☐ Yes

☐ No

An individual can only raise a dispute under Section 2A.
A dispute under Section 2(k) can be raised only collectively by a union.



REPORTING PERIOD - JULY-2024

Act	State	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Aug	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Aug	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Aug	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
Employees State Insurance Corporation Act	Pan India	15-Aug	ESIC Remittance
Professional Tax Act	Andhra Pradesh	10-Aug	Professional Tax Remittance cum Return
	Telangana	10-Aug	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Aug	Professional Tax Remittance
	Gujarat	15-Aug	Professional Tax Remittance
	Karnataka	20-Aug	Professional Tax Remittance cum Return
	West Bengal	21-Aug	Professional Tax Remittance
	Maharashtra	31-Aug	Professional Tax Remittance cum Return
	Odisha	31-Aug	Professional Tax Remittance cum Return
	Assam	31-Aug	Professional Tax Remittance cum Return
	Nagaland	31-Aug	Professional Tax Remittance
	Meghalaya	31-Aug	Professional Tax Remittance
	Mizoram	31-Aug	Professional Tax Remittance
	Sikkim	31-Aug	Professional Tax Remittance
	Manipur	31-Aug	Professional Tax Remittance
	Tripura	31-Aug	Professional Tax Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	05-Aug	WWF Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	15-Aug	WWF Return

**Let's Connect again at
5PM on 5th September, 2024**



*Thank
you*



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