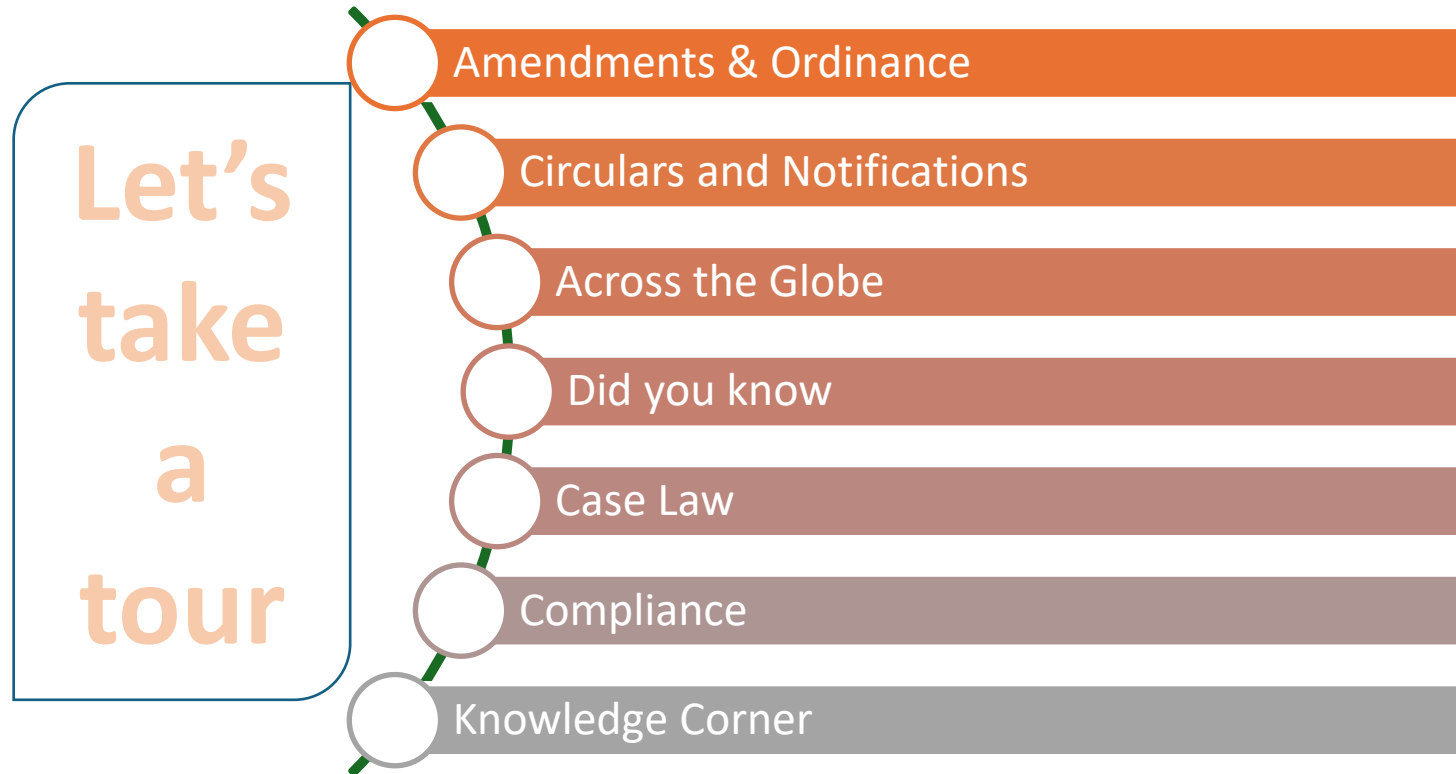


LABOUR LAW MONTHLY UPDATE

OCTOBER 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.





AMENDMENTS AND ORDINANCE

KERALA FACTORIES RULES, 1957

Amendment Dated: 11.09.2024

Kerala Factories (Amendment) Rules, 2024

- The Kerala Factories Rules, 1957, was amended to address the procedure for the transfer of a factory license.
- A proviso has been inserted to Rule 8 of the Kerala Factories Rules, 1957.
- It specifies that in cases where a factory is closed owing to financial crisis, lack of raw materials, or shortage of labour etc and subsequently taken over by another employer no transfer fee will be charged.
- Instead, only an amendment fee will apply.
- This provision aims to facilitate smoother transitions and support the continuation of operations, particularly in challenging economic circumstances, while minimizing the financial burden associated with the transfer of licenses.

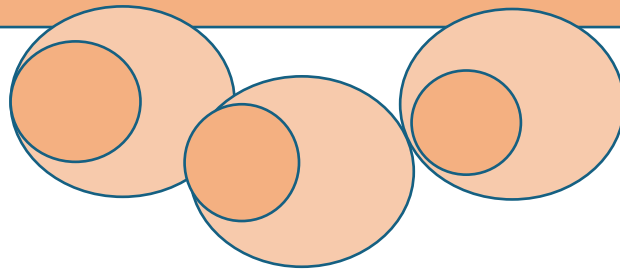
THE GOA RIGHTS OF PERSONS WITH DISABILITIES RULES, 2018

Amendment Dated: 19.09.2024

The Goa Rights Of Persons With Disabilities (Second Amendment) Rules, 2024

- The following Amendments have been made to The Goa Rights of Persons with Disabilities Rules, 2018:-
 - The amendment to Rule 3, sub-rule (1), clause (iv) concerning the **constitution of the Committee for People with Disabilities**, specifies that the term "The Director, Directorate of Social Welfare" will be replaced with "The Director, Department for Empowerment of Persons with Disabilities."
 - The amendment to Rule 4, sub-rule (3), concerning the **application for limited guardianship**, specifies that the term "The Director, Directorate of Social Welfare" will be replaced with "The Director, Department for Empowerment of Persons with Disabilities" and in sub-rule (4) the term "Assistant Director of Directorate of Social Welfare" will be substituted with "Official, not below the rank of Assistant Director"

Circulars and Notifications



REGISTRATION OF GIG AND PLATFORM WORKERS ON e-SHRAM PORTAL OF THE MINISTRY OF LABOUR AND EMPLOYMENT

Notification Dated: 16.09.2024

Registration of the Gig and Platform Workers on e-Shram Portal

- The e-Shram portal, launched by the Ministry of Labour & Employment on August 26, 2021 aims to register and support unorganised and migrant workers in India.
- Testing the portal with few Aggregators have also been completed to ensure API intergration with E-Shram portal.
- Going forward, Aggregrators are encouraged to on board themselves along with the platform workers engaged by them on the e-Shram Portal.
- This initiative is taken to achieve an equitable gig and platform economy.

OFFICE OF THE COMMISSIONER LABOUR DEPARTMENT, DELHI

Notification Dated: 23.09.2024

Payment Of Bonus By Contractors To Outsourced Workers

- The Office of the Commissioner(Labour) Labour Department, Delhi has issued advisory notification with regard to the Payment of Bonus to Contract Labourers.
- The Payment of Bonus Act, 1965 in India mandates that establishments with 20 or more employees must pay bonus to their employees.
- The circular further states that the Principal Employer holds significant responsibility to ensure that all contractors comply with various labour laws.

**MEMO NOTE REGARDING IMPLEMENTATION
OF SEXUAL HARASSMENT OF WOMEN AT
WORKPLACE (PREVENTION, PROHIBITION AND
REDRESSAL) ACT, 2013**

Notification Dated: 03.09.2024

Implementation of the POSH Act-Gurugram

- The Office of the Additional Deputy Commissioner cum District Officer in Gurugram has emphasized the importance of forming an Internal Committee as mandated by the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (POSH Act).
- This committee is legally required in organizations to address and redress complaints of sexual harassment, ensuring a safe and supportive work environment for women. The formation of this committee is crucial for compliance with the law, promoting awareness, and providing a structured mechanism for reporting and resolving incidents of harassment in the workplace.

QUIZ!

An establishment provides for gratuity as per its pension scheme.

**Will employees covered under the pension scheme be entitled to gratuity under
Payment of Gratuity Act 1972?**

- ☐ Yes. They will be entitled.
- ☐ No. They will not be entitled.



ACROSS THE GLOBE

Singapore introduces Platform Workers Bill to enhance protection for Platform Workers

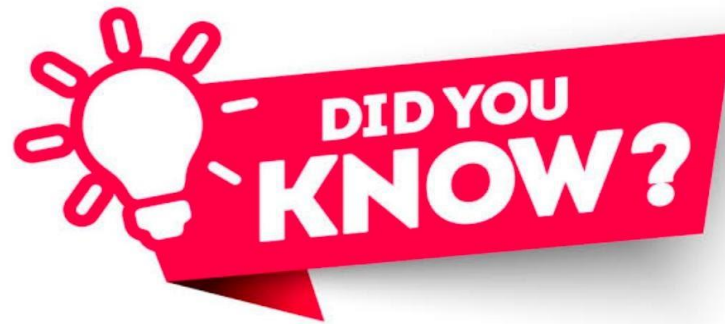


- The Platform Workers Bill was passed in parliament in order to strengthen protections for Platform Workers in three areas:
 - Housing and retirement adequacy through Central Provident Fund ("CPF") contributions by both platform operators and workers
 - Financial compensation if they get injured while working
 - A legal framework for representation
- The Bill amends certain Acts such as the Central Provident Fund Act, 1953, Income Tax Act, 1947, Industrial Relations Act, 1960, Trade Disputes Act, 1941, Trade Unions Act, 1940, Work Injury Compensation Act, 2019 ("WICA"), and Workplace Safety and Health Act, 2006 ("WSHA") - to provide for the rights, obligations, protections and representation of platform workers and platform operators under those Acts.
- This Bill will apply to on-demand delivery and ride-hailing services and therefore creates a new category of workers in addition to employees and the self-employed.

New York mandates paid Pre-natal Leave



- Employers will now need to provide upto 20 hours of paid leave in a 52-week period for pregnant employees in order to attend prenatal medical appointments and procedures.
- This is the first law of its kind in United States where it provides a separate bank of paid, protected leave for pregnant employees for prenatal care above and beyond existing paid leave entitlements.
- The paid prenatal leave is not an accrued benefit and is immediately available to employees from the time they are hired.
- The 20 hours of paid leave can be taken in hourly increments and is considered to be in addition to the paid sick and safe leave. The statute does not restrict the number of times the paid prenatal leave can be taken by a single employee over time, other than to limit the use to 20 hours in a 52-week period.





In **Netherlands**, since July 2024, employers with more than 100 employees are obliged to report CO2 emissions from work-related travel and commuting.



**EXECUTIVE ENGINEER, ELECTRICITY TRANSMISSION
DIVISION VS. MAHESH CHANDRA AND ANOTHER
2024:AHC:69169**

EXECUTIVE ENGINEER, ELECTRICITY TRANSMISSION DIVISION VS. MAHESH CHANDRA AND ANOTHER 2024:AHC:69169

- The Respondent employee was appointed as Assistant Storekeeper by UP State Electricity Commission on 01.05.1966. Upon attaining superannuation on 31.01.1997, the Respondent was granted provisional pension . Since his retrial dues were not paid within the stipulated time , the Respondent filed an application under Section 33C(2) of Industrial disputes Act, 1947 seeking interest on the delayed payment of pension, provident fund and leave encashment.
- The Labour court in its order dated 02.05.2012 awarded the Respondent 18% interest on the delayed payment of pension, provident fund and leave encashment.
- The Petitioner challenged the Labour Court's order before Allahabad High Court.

EXECUTIVE ENGINEER, ELECTRICITY TRANSMISSION DIVISION VS. MAHESH CHANDRA AND ANOTHER 2024:AHC:69169

- The Employer contended that the Labour Court exceeded its jurisdiction by awarding interest in proceedings under Section 33C(2). The Petitioner asserted that Section 33C(2) was exclusively for the purpose of executing existing awards or settlements, and that interest was not a component of executions.
- The High Court examined the nature of Section 33C(2) as an execution mechanism and held that the Labour Court has exceeded its jurisdiction by awarding interest . The Court emphasized that Section 33C(2) was primarily intended for the execution of previously determined rights and did not provide for the award of interest.



**VVF LIMITED EMPLOYEES UNION VS. VVF INDIA
LIMITED AND ANOTHER
2024 INSC 302**

VVF LIMITED EMPLOYEES UNION VS. VVF INDIA LIMITED AND ANOTHER 2024 INSC 302

- The employer and employee VVF India Limited of Civil appeals before Hon'ble Supreme Court originating from a Bombay High Court Judgement concerning wage revisions at VVF India Limited. The first appeal was filed by the Employees union challenging the dismissal of their review petition, while the second appeal was filed by Employer contesting the wage demands.
- The proceedings originate from a charter of demand submitted by the union on 04.03.2008, covering 146 workers employed at two units in Mumbai (Sewree and Sion) following a demerger from VVF Ltd. The Tribunal in its order dated 29.03.2014 partially accepted Union's demand granting several allowances but rejected key demands related to pay scale and dearness allowances.
- The High Court in its judgment dated 25.07.2019, upheld the Tribunal's award granting allowances but set aside the Tribunal's ruling regarding revisions in pay scale and other key demands.

VVF LIMITED EMPLOYEES UNION VS. VVF INDIA LIMITED AND ANOTHER 2024 INSC 302

- The employer contended that the High Court had improperly engaged in a fact-finding, substituting its own findings of the Tribunal. The Employer emphasized that its financial condition was a crucial factor in determining wage structures and necessitated a conservative approach.
- The Supreme Court ultimately set aside both the judgments of the Bombay High Court and the Award of the Tribunal. The Apex Court directed the Industrial Tribunal to reassess the wage demands of the employees within a six-month period. The Supreme Court emphasized that the Industrial Tribunal should adequately consider all relevant financial aspects of the Employer, in conjunction with the Union's claims. This would ensure a comprehensive re-evaluation of the circumstances surrounding wage demands and allowances.



CONTINUITY OF SERVICE AND ATTENDANT BENEFITS

**When will a workman be automatically entitled to
back wages
or
Attendant benefits
or
Continuity of service ???**

(1) reinstatement with continuity of service and with back wages

or

(2) reinstatement with continuity of service, but without back wages

or

(3) reinstatement without continuity of service and without back wages

or

(4) reinstatement with continuity of service and with attendant benefits, but without back wages

or

(5) reinstatement with continuity of service, but without back wages and without any attendant benefits

or

(6) reinstatement without continuity of service, without back wages and without any attendant benefits

or

(7) stoppage of four increments with cumulative effect on reinstatement.



What does an award of the Labour Court granting reinstatement with continuity of service but without back wages and attendant benefits to an employee mean ??

Can an employee be entitled to consequential benefits based on an award directing him to be reinstated into service with continuity of service alone??

Whether an employee is entitled to promotion ?

**Can an employee reinstated into service
without any benefits claim notional
increments ??**

A.P.S.R.T.C And Another Vs. S Narsagoud., Civil Appeal No.6362 of 2000 order dated 15.01.2003., SC

- The Respondent, a conductor employed by Andhra Pradesh State Road Transport Corporation (APSRTC). The Corporation considered his absence as unauthorized and, after a departmental inquiry, removed him from service.
- The Respondent challenged this dismissal by way of a dispute under the Industrial Disputes Act, 1947. The Labour Court ordered his reinstatement **with** continuity of service but **without** back wages.
- The Respondent then filed a writ petition in the High Court, seeking for wage increments on par with the other employees for the period
- The High Court directed the Corporation to consider the increments for the period of absence.

Contd..

- The Corporation argued that Continuity of service only ensures for seniority and pension benefits, but it does not entitle the employee to receive increments. Without a judicial order granting benefits, increments cannot be claimed.
- The Supreme Court agreed with APSRTC, stating that continuity of service does not automatically entitle an employee to increments during periods of unauthorized absence unless explicitly ordered.
- It emphasized that increments are earned based on time spent on duty or sanctioned leave, not unauthorized absences.
- The Apex Court set aside the High Court's order, concluding that allowing increments for such periods would reward the misconduct committed. The appeal was allowed, and no costs were awarded.

MAHABIR PRASAD VS. DELHI TRANSPORT CORPORATION; *[2014 SCC ONLINE DEL 3757]*

- The Petitioner was an employee of the Delhi Transport Corporation [DTC] and was dismissed on allegations of misconduct on 19.01.1995. Aggrieved by the order of dismissal the Petitioner challenged the same before the Labour Court by raising an industrial dispute. The Labour Court passed an award, directing the DTC to reinstate the Petitioner with continuity of service but without back wages.
- As per the direction of the Labour Court, the Respondent DTC issued an order dated 12.05.2011 reinstating the petitioner without back wages as well as the benefits of notional pay fixation, promotion, ACP and increments and the order also stated that in its order that the services of the Petitioner would not be counted for the purposes of pension and terminal benefits for the intervening period.
- Aggrieved by the same the Petitioner approached the Central Administrative Tribunal which upheld the order of the DTC.

Contd..

- Challenging the order of the Central Administrative Tribunal and the Delhi Transport Corporation for denial of the benefits of notional pay fixation and increments and for counting that the period out of employment as not being in service, for the purposes of pension and terminal benefits, this petition has been filed by the Petitioner before the Hon'ble High Court of Delhi.
- The Hon'ble Delhi High Court held that denying the notional pay benefits would amount to withholding several increments and it would be equivalent to imposing a compounded major penalty and direction to grant continuity of service means the Petitioner had to be given notional pay and increments for the duration he was out of employment, so the petitioner is entitled to the notional pay and increments benefits and the period between his removal and reinstatement shall be counted for the purpose of pension and other terminal benefits. Hence the Writ Petition was allowed.

G Srinivas Vs. A.P.S.R.T.C., Andhra Pradesh High Court., order dated 02.05.2003

- The Petitioner, a former employee of the Respondent Corporation, was removed from service due to misconduct but was later reinstated without back wages or attendant benefits based on a Labour Court award.
- The Petitioner argued that he should receive notional increments for the period he was out of service.
- The High Court, dismissed the writ petition, by holding that the Labour Court's award, which reinstated the petitioner with continuity of service but without attendant benefits, did not entitle him to notional increments.
- The Court held that the award's plain meaning must be looked into, and the denial of attendant benefits also implied the denial of increments for the period he was out of service.

K.M. Venkatakrishnan Vs. The State of Tamil Nadu and Others., Madras High Court., [W.P.No 25102 of 2016 dated 03.06.2020]

- The Petitioner sought a direction of the High Court to compel the government to pay him arrears for his positions as Under Secretary and Deputy Secretary from 12.03.2004 to 31.10.2007.
- The Petitioner had been suspended in 1998 due to allegations of financial shortfall but was later taken back to service after prolonged litigation. Despite his inclusion in the promotion panels, the Petitioner only received notional pay adjustments and pension benefits, but no monetary arrears of rent and other benefits.
- He filed this writ petition to claim those arrears.

Contd..

- The contention of the Government was that the Petitioner was not entitled to arrears because he never physically assumed the higher positions, and his pay was correctly fixed based on the Rules that allow for only notional promotions without financial benefits.
- The Court found no merit in the petitioner's claims, ruling that the Government had already complied with previous court orders by granting him the appropriate retirement benefits and that he was not entitled to additional monetary compensation.

VVG Reddy Vs. APSRTC., Supreme Court [(2009) 2 SCC 668]

- The Appellant challenges the judgment dated September 21, 2007, passed by the Andhra Pradesh High Court, which reversed the ruling of the Single Bench allowing the Appellant's claim for notional salary increments.
- The Appellant, a conductor working with the Road Transport Corporation, was suspended in 1982 following a disciplinary proceeding and later dismissed. He contested his dismissal, and the Labour Court reinstated him in 1988, without back wages or other benefits. After reinstatement, the Appellant's salary was not aligned with that of his colleagues, which made him to file a petition in 1989, which the Labour Court granted. Despite this, his pay was not adjusted, leading him to file a writ petition in 2002, which was initially allowed by a Single Judge, directing the Corporation to grant notional increments.

Contd..

- However, the Corporation's appeal was ultimately allowed in 2007.
- It is against the said order that the Appellant has filed this Civil Appeal.
- The Apex Court found that since the Appellant had not been granted back wages or benefits by the Labour Court, he could not claim notional increments for the period during which he was not in service. The Court held that continuity of service without explicit mention of back wages or increments did not entitle the Appellant to claim salary increases for the period of dismissal. Various precedents, including decisions from similar cases, were cited to support this conclusion.
- Ultimately, the Court dismissed the Appellant's claim for notional increments for the period from 1983 to 1989.

CONTINUITY OF SERVICE



**Seniority
&
Pensionary /Terminal benefits**



LexPOSH



LexPOSH

Mrs. X v. Internal Complaints Committee

**[Karnataka High Court – W.P.
No. 8127 of 2019(GM-Res)]**

Mrs. X v. Internal Complaints Committee



LexPOSH

- On 23.08.2018, the Petitioner had hired a Taxi through an aggregator /platform to her workplace.
- During the ride, the driver stared at her through the rear mirror making her uncomfortable. Thereafter, the driver started watching pornographic video and held the phone in a manner to make it visible to the Petitioner while also doing an obscene act. The Petitioner frightened and repeatedly asked the driver to stop the vehicle, but he refused. The Petitioner was finally dropped near her workplace.
- She lodged a complaint against the driver with the aggregator/ platform and she was informed that the driver would be Blacklisted and sent for counselling and training.
- In these circumstances, she filed a complaint with the Police Station. During Police enquiry, the aggregator/ platform informed that the driver was not scheduled to ride the Taxi for which the Petitioner booked and further confirmed that there was a swap of drivers, and such swapping are common.

Mrs. X v. Internal Complaints Committee



LexPOSH

- The Petitioner thereafter issued legal notice calling upon aggregator/ platform to proceed against the driver under the POSH Act.
- By reply dated 27.09.2018, aggregator/ platform stated that it doesn't have jurisdiction to take cognizance of the complaint as the drivers were not its employees but were independent contractors.
- The Petitioner made a complaint to ICC of the aggregator/ platform under POSH Act, but they refrained to entertain the case citing they don't have jurisdiction. Aggrieved of the same, the Petitioner approached the Karnataka High Court by way of Writ Petition.
- The High court held that the Writ Petition against ICC and aggregator/ platform is maintainable .
- There exist employer-employee relationship between aggregator/platform and driver subscriber based on the commercial term segment of the subscription agreement.

Mrs. X v. Internal Complaints Committee



LexPOSH

- The impersonator who was allowed to operate the taxi by the driver-subscriber contrary to the terms of Subscription Agreement and the Aggregators Rules, 2016 cannot be allowed to go scot-free merely because ICC and aggregator/platform contend that they have no control either over the driver-subscriber or the impersonator, which is contrary to material on records.
- The ICC failed in discharging his statutory obligation by not accepting the complaint made by the Petitioner and enquiring into allegations, on the erroneous premise of it lacking jurisdiction in the matter.
- The HC granted the following relief to the Petitioner :
 - Direction to ICC to enquire into the complaint.
 - Compensation of Rs. 5 Lakhs by the driver and OLA and additional sum of Rs. 50,000 towards cost.

QUIZ!

An establishment provides for gratuity as per its pension scheme.

**Will employees covered under the pension scheme be entitled to gratuity under
Payment of Gratuity Act, 1972?**

☐ **Yes**

☐ **No**

The employer has to seek an exemption under the Act. Only then he shall not be liable to pay
Gratuity in terms of the Payment of Gratuity Act 1972



REPORTING PERIOD - OCTOBER-2024

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

**Let's connect again
At
5PM on 7th November, 2024**



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*Thank
you*



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