# LABOUR LAW REPORTER Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

A PRACTICAL JOURNAL FOR HUMAN RESOURCES MANAGEMENT

#### MONTHLY

## **IMPORTANT JUDGMENTS**

Rs. 245/- per issue

Bom. HC 80

No 1

•	Assaulting a lady supervisor will justify dismissal.	•	Provident Fund coverage without verifying record is to b
	Bom. HC 73		quashed. Del. HC 1
•	Unreasonable clause in a contract between parties who are not	•	An ex-parte order without ascertaining about service of
	equal is violative of constitution of India. Cal. HC 96		summon to be quashed. P&HHC 19
•	No punishment for misconduct, if not committed within establishment.  Gui. HC 29		Reviewing authority must hear concerned party. P&HHC 2
•	Reinstatement of an employee, guilty of theft, is not proper.	•	An order passed without issuing notice to the parties i untenable.  P&HHC 23
Ĭ	Gau. HC 86		Workman has to prove 240 days of working. Guj. HC 24
•	Coverage under EPF Act on EO's report is not valid. Del. HC 1		A non-speaking order of EPF Tribunal will be unsustainable
•	Employer has primary liability to deposit its own and		P&HHC15
	employees' contributions. Ori. HC 39		Contractor exercising control over its workers will be employe
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	Jhar. HC 44	•	Section 53 of the ESI Act not bars the claim for compensatio
•	Coverage under EPF Act can't be stalled by one owner merely by		against the third party. Karn. HC 57
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•	Forfeiture of gratuity only when dismissal is for prescribed	•	High Court can direct for payment of gratuity to an employee
5.4	misconduct under the Act. AP HC 47		Cal. HC 10
•	Employer can adjust penal rent from the gratuity payable to an	•	Reinstatement of part-time sweeper lying inebriated on th
	employee. Jhar. HC 92		floor of bank is not proper. Ker. HC 87
•	Acquittal in the criminal trial is not binding upon Labour Court.  Gau. HC 86	•	100% compensation can be awarded despite doctor
	Labour Court can interfere with dismissal only when it is		recommendation for 40% disability. MP HC 102
	disproportionate to the misconduct.  Bom. HC 73	•	Rejection of gratuity appeal not proper when true copy wa attached. Pat. HC 94
	Discipline is must for growth and prosperity of any institution.		Dismissal after enquiry is proper when held <i>ex-parte</i> due t
	Bom. HC 73		non-participation of workman. P&HHC 85
•	Members of the Cooperative Society are not to be covered under		Termination can be challenged at the place where notice wa
	Provident Fund Act. Mad. HC 34		received by the workman. Cal. HC 96
•	VDA or DA forms part of minimum wages. Karn. HC 60	•	Gratuity can be calculated on higher rates when the rules s
•	Abandonment rightly presumed when unauthorised absence is		prescribe. Ker. HC 83
3	for more than specified period. P&H HC 9	•	Review of order under section 7A of the EPF Act is permissible
•	Reinstatement is proper when misconduct committed outside		P&H HC 23
	the establishment. Guj. HC 29	•	Contract Labour (R&A) Act will not be applicable if employee
•	RPFC is empowered to direct for production of documents.		engaged are less than 20. P&HHC 17
•	Del. HC 1	0	Compensation not reinstatement will be appropriate in
	A non speaking order is not tenable.  P&HHC 19		belated dispute. Guj. HC 27
•	An order without hearing is not tenable. P&H HC 23 Undue leniency by Labour Court sends a wrong signal to other		Government has rightly rejected to refer a dispute for adjudication raised after 14 years.  HP HC 93
•	employees. Bom. HC 73		Rejection of review by APFO without any reason is not lega
•	High Court will interfere with erroneous order of RPFC.		Jhar. HC 89
	Mad. HC 34		Employer can lead evidence before Labour Court when 15

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employees dismissed without enquiry.

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VOL. XLIV JANUARY 2013

Guj. HC 29

Looting of bus warrants criminal trial, not enquiry.

and the months of the months o JNIVERSIT

1	STATUTE (central)	COMPLIANCE	LAST DATE
	Contract Labour (R&A) Act, 1970 & Rules	Half yearly return by contractor (in duplicate)	30th
	Employees' Provident Funds & Misc. Provisions Act, 1952	Remittance of contributions	15th
	Employees' State Insurance Act, 1948	Deposit of ESI contribution	21st
	Employees' State Insurance Act, 1948	Annual information about factory/ establishment covered	31st
	Factories Act, 1948	Annual returns	15th
1	Maternity Benefit Act, 1961	Annual returns & details of payment ending 31st Dec.	21st

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# LABOUR Problems & their Solutions

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- · Depositing PF contributions for contract employees - does not give right for absorption with principal
- · Time for payment of retrenchment compensation
- · Gratuity how far exempt from Income Tax

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EPF & Pension Related Problems & their Solutions

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- · Bandha-Ni-Hing manufacturing not to be covered under EPF & MP
- · Delay beyond 60 days for filing appeal not to be condoned
- · Determination of Pf dues without identification of beneficiaries to be set aside
- · EPF dues not to be determined on closed establishment

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· Revised Minimum Rates of Wages in Chattisgarh

- · Employees Provident Fund Organisation Settlement of claim in respect of International Worker
- Jammu & Kashmir Employees Provident Funds (and Miscellaneous Provisions) (Amendment) Act, 2012



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- · Letter to the referee for furnishing details about a candidate who has applied for the job
- Letter to a candidate expressing no vacancy but you need further
- Charge-sheet for absence/overstaying of leave for more than eight consecutive days and availing of leave on false ground



JS-31 (51)

- · Most of the organisation spend much time and money on devising innovative rewards and recognition for its employees but it has always been question of debate that whether employees are really motivated by rewards and recognition. I am bit uncertain about introducing the rewards and recognition scheme for my employees. What do you suggest?
- I am new to HR. Just joined a company where my boss has asked me to develop orientation process. Can you please help me out in this regard in developing this process?
- · We have identified few employees who always need supervision and push up to perform. Whenever there are issues of under performance, the same employees are highlighted. How to handle such incompetent employees?
- · What do you think about the importance of hiring/selection process as major factor in attrition?

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A PRACTICAL JOURNAL FOR HUMAN RESOURCES MANAGEMENT

#### MONTHLY

### IMPORTANT JUDGMENTS

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	A Dalik Ullicial is rightly distills sed for proved illisconducts.		milital burden of proving wrongfur termination to on working.
	Supreme Court 211		Del. HC 208
•	Sleeping during duty hours would justify dismissal from service of a	•	Self-statement for 240 days working is not a sufficient proof.
19	watchman. Mad. HC 127		Del. HC 113
•	Prosecution for Contract Labour (R&A) Act, 1970 lies only against the	•	Reinstatement is not proper for unauthorized absence after holding
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•	Transfer in the absence of such condition is unsustainable.  Del. HC 118	•	Termination of a lady employee for complaining sexual harassment
	Transfer based on terms and conditions can't be challenged. MP HC 134		would send a wrong signal. Guj. HC 146
•	Unauthorized overstay for a long period would justify dismissal.	•	For coverage under ESI, any report in the absence of descriptions of employees is not sustainable.  MPHC 124
	Del. HC 121		omproyout in the termination of
•	A Sales Manager is not a 'workman'. Del. HC 204	•	Abandonment will be presumed when termination is not proved.
•	Unless examined, loss of confidence can't be presumed. Guj. HC 146	4	Del. HC 184
•	Temporary embezzlement is also a serious misconduct. Del. HC 190	•	Resignation can't be challenged when receipt of final payment is
	A temple is covered by Payment of Gratuity Act. Karn. HC 163		proved. Del. HC 181
•	Termination justified if 240 working days are not proved. Del. HC 184	•	Termination rightly set aside when no approval sought during pendency of dispute.  Del. HC 179
	Appeal not writ is tenable to challenge the order of EPF Officer.		
	APHC 150		
•	Effective adjudication only when relied documents are supplied to		Deposit of ordered amount is must for filing appeal under Gratuity Act.  Guj. HC 201
	opposite party. APHC 150		Unless mala fide, transfer not to be interfered by Courts. Mad. HC 195
•	A claim based on fake documents would fail.  Del. HC 113		
•	Unpaid Sundays and public holidays are not to be counted for	•	A dispute is untenable on failure of workman to prove 240 days working.  Del. HC 113
7	computation of 240 days working. P&H HC 132		High Court will interfere only when an Award is perverse. Del. HC 113
•	Despite upholding the enquiry as fair, Labour Court can modify the		Prosecution justified for violation of Delhi Shops and Establishments
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•	Criminal complaint against an officer without his designation is not		Cases of sexual harassment shall be dealt seriously by the courts.
	tenable. AP HC 151		Gui. HC 146
•	A Call centre is liable to pay minimum wages.  Del. HC 120		An order is liable to be set aside when no supporting reasons assigned
•	Insurer is liable for compensation for accident even when the vehicle is		MP HC 124
	stationary. Karn. HC 153	•	Dismissal for temporary embezzlement is not disproportionate
•	Ex-parte enquiry justified when the workman did not demand T.A., D.A. etc. for attending.  MP HC 134		punishment. Del. HC 190
	Enquiry sans its prescribed principles is set aside. Mad. HC 125	•	Parity with co-delinquents can't be claimed by a delinquent employee
•	Strict rules of evidence are not to be followed in domestic enquiries.		Del. HC 188
•	Del. HC 190	•	Oral evidence is not necessary in exparte enquiry. Supreme Ccourt 211
	Industrial Tribunal is not to exercise appellate powers for examining	•	A muster roll employee not entitled to regularization. Del. HC 184
	validity of an enquiry.  Del. HC 188	•	Non-cross-examination of Management witness would go against the
	Details of documents & names of witnesses not necessary in a charge-		workman. Del. HC 181
	sheet. Supreme Ccourt 211	•	Safety and congenial working conditions are to be provided to female
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	intentional. Guj. HC 198	•	Reduction of damages for delayed payment of provident fund dues
•	A gratuity appeal after 120 days of order is barred by limitation.		proper if imposed without ascertaining the cause of delay. Guj. HC 198
1	Guj. HC 201	•	Continuous posting at any fixed place is not justified. Mad. HC 195

and of the none of made by the UNIVERGET STATUTE (central)

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Contract Labour (R&A) Act, 1970 & Rules Employees' Provident Funds

15th

& Misc. Provisions Act, 1952

Remittance of contributions

15th

Employees' State Insurance Act, 1948

Deposit of ESI contribution

21st

Minimum Wages Act, 1948

Annual return

1st

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ABOUR Problems & their

- · Gratuity to casual workers
- · Essential ingredients of enquiry report
- · Accident compensation both principal employer and contractor are liable
- · Limitation for claiming accident compensation
- · Break in service for gratuity

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- Determination of money based on inspector's report - not valid

- · Assessment without physical verification of employees to be quashed
- · Tribunal allows arrears to be paid in installments
- Bank guarantee can also be accepted as precondition for deposit and filing of appeal
- · Higher salary can be reduced to Rs.6500 by employer for PF contributions

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- · Revised Minimum Rates of Wages in Jammu & Kashmir
- · Revised Minimum Rates of Wages in Punjab

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Pro-forma suggested for-

- . Agreement between company & marketing executive
- · Tampers with the attendance record of the establishment
- Memo to be issued to an employee for his habitual absence and sending medical certificate
- Advisory letter to an employee who has refused to accept the communication from the management
- Advisory letter to desist from slowing down work





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- My question to you is loyalty among employees still exist? What are the factors that determine an organisation or employer should draw loyalty from employees?
- Is it very important for managers to have in the present business environment to succeed?
- My management has decided to remove few employees from their services as they have been found poor performers and also not able to work in teams. It has been made my responsibility to execute the decision. Can you pl. guide how to proceed and execute the decision?

# **EPORTER** Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

# A PRACTICAL JOURNAL FOR HUMAN RESOURCES MANAGEMENT

#### MONTHLY

quashed.

untenable.

enquiry.

## **IMPORTANT JUDGMENTS**

Rs. 245/- per issue

1	
•	Reinstatement is not a must for a sacked worker. Supreme Court 305
•	Quitting job for no reason is resignation in duress. Supreme Court 231
~	
9	Compensation, in lieu of reinstatement, proper to a worker on daily
1	wages. Supreme Court 225
9	Disciplinary authority has to initiate enquiry when it is vitiated by Court.
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•	Theft is a grave misconduct hence justifies dismissal. Karn. HC 269
•	Prosecution under Provident Fund Act lies against the person who is
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•	EPF contribution for non-identifiable workmen is not justified.
-	Pat. HC 282
•	No back-wages on failing to prove unemployment during interregnum.
	AII. HC 285
•	Transfer of an employee to a different entity is not legal. Ori. HC 289
•	Reinstatement is set aside when the workman had failed to report for
	duty. Del. HC 312
•	Termination will be set aside when retrenchment compensation is not
	paid. Jhar. HC 324
•	Denial of approval for dismissal u/s 33(2)(b) of ID Act will render it non
10	est. Ori. HC 246
-	Employer has to pay gratuity and notify to Controlling Authority.
3	All. HC 254
1	
•	Appeal not writ is appropriate for challenging order of Provident Fund
1	Authority. Ori. HC 250

Reinstatement will follow if retrenchment compensation is not paid.

Non-bailable warrant without summons for violation of EPF Act to be

Enquiry when upheld as proper, punishment can't be interfered by

No escape from damages/interest on delayed deposit of EPF

Unauthorised and long absence must be treated seriously. Karn. HC 271

Removal of a worker, who worked for 240 days, without reason is

Dismissal justified when illness by the employee is not substantiated.

No violation of natural justice when employee does not participate in

Personal allegations without impleading the official is untenable.

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ırt 231		relationship.
n daily	•	Reinstatement
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Court.	•	Resignation can
ırt 301	•	Mere denial of
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HC 246		ID Act.
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		THE RESERVE TO THE PERSON NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN
,	Mere identity card is not sufficient evidence for emplo	yer-employee
	relationship.	P&H HC 323
1	Reinstatement is proper when only one out of five cl against a workman with 15 years of unblemished record.	arges proved
	against a workman with 15 years of unblemished record.	Mad. HC 319
	Resignation can't be withdrawn after two years.	Del. HC 309
		CONTRACTOR OF THE PARTY OF THE PARTY.

f back-wages is not an appropriate punishment for bsence for a long period. Karn. HC 271 nade under head of gratuity can't be set off towards

All. HC 254 letterhead of the Management, would not be genuine.

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A finding without evidence is not legal. Pat. HC 282

No consequential benefits when workman is gainfully employed. Karn, HC 292

Only an employer can assess efficiency of a probationer. Del. HC 278 Del. HC 278 Probationer can't challenge his termination.

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Absorption of a bank employee in a belated reference is liable to be set P&H HC 317 aside.

An enquiry would be perverse in the absence of material evidence. Del. HC 307

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All. HC 256

Karn, HC 294

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Del. HC 278

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Del. HC 273

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Transfer, when mala fide, will be interfered.

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An Award to be quashed when contrary to evidence.

# COMPLIANCE

STATUTE (central)

COMPLIANCE

LAST DATE



Employees' Provident Funds & Misc. Provisions Act, 1952

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- · Retrenchment and interest of workers
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- · Trade unions necessity of

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**Employees' State Insurance Related** Problems & their Solutions



& Pension



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- · Determination of dues based on inspector's report to be quashed · Non-supply of EO report to the employer would vitiate the
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- · Basic wages to attract PF contributions when wages split into

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- Agreement between employer and employee when rent free accommodation is provided to the employee in the residential complex of the industrial establishment
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### (50)PAN INDIA



- · Generally it is felt that negative feedback demotivates the employee and it spoils the whole process. What is your opinion?
- · Most managers simply save their skin and throw the responsibility on the person who committed the mistake and they take it as law of the present times. What do you think, should one take responsibility of others' mistakes?
- How should we reinforce the basic value system of honesty in the employees?
- · How can I manage my talented employees so that they stay with me?

# Chief Editor: Advocate H.L. Kumar **Editor: Advocate Gaurav Kumar**

A PRACTICAL JOURNAL FOR **ESOURCES MANAGEMENT** 

Return of stolen watch will not absolve an employee from his dismissal.

Successive appointments for fixed-term employment will be unfair

A charge-sheet will not be vague because the foul language is not

#### MONTHLY

### **IMPORTANT JUDGMENTS**

labour practice.

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Del.HC 420

**APHC 433** 

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	malafide. MP HC 415
•	A personal driver of an official can't claim to be bank employee.

Termination of a probationer-chowkidar for absenting one night will be

set aside for want of hearing.

	reproduced. AP HC 433
•	Dismissal not to be modified merely no witness, other than assaulted
	officer, appeared. AP HC 433
•	Imprisonment to be set aside for delayed deposit of ESI contributions.
	Ker. HC 372
•	Back-wages can't be granted unless pleaded. All. HC 369
•	A contractor is primarily liable to pay gratuity.  Mad. HC 374
•	Definition of an 'employee' under Provident Fund Act is wider than a
	'worker' under the Factories Act or a 'workman' under ID Act.
	Del. HC 347
•	A contract is not valid when principal employer controls economic
	activities. Del.HC 352
•	Unpunctual and irregular employee is not fit for employment.
	Del. HC 362
•	Mere pendency of enquiry would not justify the forfeiture of gratuity.
	MPHC 418
•	Changing designation of a driver to lift-operator will be unfair labour
	practice. Bom. HC 395
•	Communication of transfer by General Manager instead of Managing
	Director will not vitiate it.  MP HC 415
•	A contract of personal service cannot be enforced. P&H HC 400
•	Rejection of adjournment request supported with Ayurvedic doctor not
	appropriate. P&HHC 402
•	Retrenchment is illegal on non-payment of compensation.
10	P&H HC 408 & 426
•	Non-examination of guest for theft is not fatal to validity of enquiry.
	Del. HC 423
•	Termination must be challenged timely even in the absence of
	limitation. P&H HC 427
•	High Court will not interfere in Award of interim relief. Raj. HC 376
•	Termination justified when school certificate not produced. HP HC 431
	Provident Fund Officer being quasi judicial can't defend its decision
	before Tribunal. AP HC 437
•	Back-wages not proper if dispute raised after 9 years. All. HC 369
•	Work in kitchen of a hotel is of perennial nature. Del. HC 352
•	Burden is upon the workman to disprove negligence. Del. HC 362
•	Transfer will not to be vitiated merely because it was not communicated
	by Managing Director. MP HC 415
•	Re-employment of retrenched worker needs supporting reasons.
	P&H HC 427
•	Compensation of Rs.2.00 lacs would be justified when 24 years have

A Christian can't claim to be schedule caste for recruitment. HPHC 431

High Court will not interfere in dismissal for assaulting the superior.

P&H HC 400

P&H HC 408

VOL. XLIV **APRIL 2013** No 4

# ompliance

STATUTE (central)

COMPLIANCE

LAST DATE



Employees' Provident Funds & Misc. Provisions Act, 1952

Remittance of contributions

15th

Employees' State Insurance Act. 1948

Deposit of ESI contribution

21st

### REPORTER

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LABOUR Problems & their **Solutions** 

Applicability of ESI upon a hospital -

Burden to prove 240 days working

Interference by the High Court in an award

Industrial Tribunals/Labour Courts to lay down

Conditions for granting approval for dismissal

whether advisable

their own procedure



JS-103 (27)

Dissuading factor for challenging in the High Court

Factories Act Related Problems & their Solutions

JS-108 (32)

JS-109

**Employees' State Insurance Related** 

(33)Problems & their Solutions

Related Problems & their Solutions



JS-117

(41)

DIGEST OF

An appeal challenging demand notice for recovery not tenable EPF Authority directed to refund the money as illegally recovered from appellant

Levy of damages without enquiry whether delay is wilful or not liable to be quashed

Denial of proper opportunity for determination needs to be remanded

₹22636 **Crore** 

JS-101

(25)

Is Lying Dormant With PF

#### MOTIFICATIONS JS-121 AMENDMENTS, & (45)DEVELOPMENTS

- · Revised Rates of Minimum Wages in State of Haryana w.e.f. 1.1.2013
- Employees' Provident Funds(Amendment)Scheme, 2013

· Production of a doctor as witness is not always imperative to support the extent of injury in an accident

JS-102 (26)

FORMS PRECEDE

JS-111 (35)

Pro-forma suggested for-

· Appointment letter to graduate engineer trainee

· Charge-sheet for gherao, strike, insubordination and picketing

· An affidavit to be given by the contractor to the management about the compliance of various status

· Application of grant for sabbatical leave



JS-127 (51)

Whether leaders can be made through training or they are just born/meant to lead and people follow them? For leadership, is it necessary to have some inborn qualities? Can you throw some

light on this aspect of leadership phenomenon? In every organisation, there are some employees who are seen as unreasonable. It becomes difficult to communicate with them and get work done. How can we deal with such kind of persons? It is obvious that you cannot have the option all the time to severe the ties with such person. Pl. give some tips to resolve such problem? How we can improve the productivity of organisation and measure it

in terms of HR effectiveness? What qualities a boss has? How he handles his people? Can you tell what kind of person should be an ideal boss?

# LABOUR LAW REPORTER Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

Prohibition of contract labour system, after consultation with Central

# A PRACTICAL JOURNAL FOR HUMAN RESOURCES MANAGEMENT

Reasons are must for modifying punishment by Labour Court.

#### MONTHLY

### IMPORTANT JUDGMENTS

**Rs. 245/-** per issue

11.1	Board, is not to be interfered.	_	Labour Court not to interfere in punishment after enquiry.
•	Picketing, agitation and slogan shouting are to be prohibited within	•	Karn. HC 467
1	500 metres of premises. Karn. HC 509		Adm. 110 407
	Termination of a probationer for sympathising with Maoists is not	•	Employer's failure to pay Provident Fund dues would justify recovery
	legal. AP HC 462		proceedings. P&HHC 453
	Enquiry is not necessary on termination of contractual service.	•	An erroneous Award by Labour Court is liable to be set aside.
•	MP HC 506		Ori. HC 501
	Persons engaged without remuneration not 'employees' under	•	Strict principles of Evidence Act are not applicable in domestic
•	Employees' Provident Fund Act MP HC 458		enquiries Del. HC 472
.40	Lilipidyccs i royldcint i dild riot.	•	No discrimination on termination of probationer who failed to bring
•			minimum business. Del. HC 476
	Reinstatement with back-wages is not automatic for non-compliance		Confirmation of a probationer is not always imperative.
-	of section 25F of ID Act. Raj. HC 486		Del. HC 476
			Dismissal without enquiry or compensation is possible if the
17	Mad. HC 490	•	Regulations so provide.  Del. HC 478
	Principal employer is liable for ESI contributions. Ori. HC 496		Dismissal is not disproportionate when the charge proved in criminal
			DISMISSALIS NOT disproportionate when the charge proved in criminal
	nrovide Karn. HC 509	ш	trial is of serious nature i.e. rash and negligent in driving.  Del. HC 478
	A person giving services voluntarily is not an 'employee' under	П	
	Employees' Provident Fund Act. MP HC 458	•	Artificial breaks not covered by section 2(00)(bb) of the ID Act.
	Learnition of punishment is for employer not court Del HC 525		Del. HC 482
	Gratuity can be forfeited on termination only for prescribed	•	Repetition of contractual appointments will amount to unfair labour
1	misconduct. Bom. HC 531		practice. Del. HC 482
1.	This condition is a second way the second way the second		Compensation is appropriate on wrongful termination of an irregular
9	Embezzlement will constitute moral turpitude for forfeiture of gratuity		workman. Del. HC 482
ľ	110110 510		In the absence of clear findings regarding functional integrality,
	of an employee.  HPHC 540  Notification prohibiting contract labour system should not be nullified		interference in the order of the Appellate Authority is not warranted.
1			P&H HC 484
1			For clubbing of establishments for Provident Fund coverage,
1	No prejudice to an employer if delinquents are represented through		'functional integrality' is imperative. P&HHC 484
1	union leader in the enquiry. Guj. HC 457		Finding of facts by the Labour Court can't be challenged in writ
1	No employee should be harassed merely because he is related to an	-	petition. Raj. HC 486
1	extremist. AP HC 462		Compensation, instead of reinstatement, is appropriate when long
1	Right of expression, if suppressed, would reduce democracy to only	•	
1	on paper. AP HC 462		time has passed. Raj. HC 486 & Mad. HC 490 Reinstatement is appropriate on non-compliance of section 25F of ID
1	Provident Funds Act is distinct from civil proceedings in context with		0 : 110 100
1	recovery of dues and penal consequences. P&H HC 455		Act. Raj. HC 489
1	Courts not to interfere with show cause notice by ESIC. Ori. HC 496		Interest accrues on delay in payment of gratuity.  Bom. HC 531
1	Deposit collectors are to be covered under EPF Act. Karn. HC 470	0	Non-regularisation unjustified when junior was regularised.
	An award, based on surmises, is to be set aside.  Del. HC 472		Raj. HC 489
1	EPF Act not applicable, if total employees are less than 20.		Refusing to appear before Medical Board will amount to
1	MP HC 458		disobedience. Mad. HC 490
1	Reinstatement with consequential relief will mean seniority for		An industrial dispute can't be converted into a complaint under
-	promotion. HP HC 460		section 33-A of ID Act. Mad. HC 490
1	No relief, when unauthorised absence is not for compelling		Conciliation Officer not empowered to adjudicate a complaint under
-			section 33A of ID Act. Mad. HC 490
1	on demotations.		Judicial admission of facts is best evidence.  HP HC 540
	Dismissal after proper enquiry is not to be interfered. Del. HC 472	1	Onalisia authorisi si iasis is assis is assis is assis is assis is assis is a si iasis is assis is a si iasis is a

STATUTE (central)

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LAST DATE



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[Journal Section]

# JS-129

MEEDS TO BE AMENDED URGENTLY

The conviction & acquittal of Dr. J.J. Irani of Tata Steel

# LABOUR Problems & their Solutions

JS-135 (27)

Implications of direct payment of compensation Death of workman by snake biting Prohibiting an emmployee to contest elections -

not change in service conditions

Incentive bonus - whether wages for gratuity Bonus on arrears - whether payable Bonus on commission

Consequences for claiming false medical bills

JS-140

JS-141

JS-149

(41)

(33)

(32)

## Factories Act Related **Problems & their Solutions**

Employees' State Insurance Related

Problems & their Solutions

& Pension Related JS-142 (34)

DIGEST OF

Determination of EPF dues only after making enquiry Inspector's report - not binding upon EPF authority EPFO directed to inspect records and determine contributions for identifiable employees

Delay in depositing contributions when not wilful, the damages reduced to 30,00,000 from Rs.1,50,64,852

# **FIFICATIONS** JS-153 AMENDMENTS, &

- · Revised Minimum Rates of Wages in Gujarat w.e.f. 1.4.2013 to 30.9.2013
- · Revised Rates of VDA by Central Government
- · Employees' Provident Fund Organisation



 No action, if misconduct committed outside the premises of the establishment, is tenable against the employee

JS-134 (26)

(35)



Pro-forma suggested for-

- Board resolution authorising for recruiting employees initiating disciplinary proceedings signing of notices for punishment etc.
- · An agreement with a consultant
- · Application for grant of leave
- · Leave pass issued by the employer
- · A memo to a workman who is taking frequent sick leave asking him as to why his services should not be terminated due to 'continuous ill-health





HR processes, low/poor performers are able to make their place and survive in the organisation. How come it happens and what could be the reasons? How should we get rid of them? I would like to know, what can be the best possible approach to

develop the organisation structure? I am going to be married soon while continuing in job. I have one point in mind. How marital status is going to affect my career

prospects in future. Will it help or mar my future? I am very much career oriented. I want to reach to the highest level in HR field in the organisation?

In our organisation, one employee has referred candidature of her girl friend for employment. We have interviewed the girl and found extremely suitable and talented. Now other managers are against such appointment. Our company policy is also silent about this aspect. What should we do? What can be the gains and loses of such policy? Can you please guide us on this point?

# EPORTER Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

A vague charge-sheet will vitiate the enquiry. Supreme Court 654

Principal employer is not liable to pay bonus to contractor's

Enquiry, conducted in accordance with service rules, cannot be

No enquiry after retirement unless the Rules provide. Guj. HC 640

Enquiry after retirement can be conducted only when rules provide.

Imposition of damages is not proper for unintentional delay in EPF

Mere submission of medical certificate will not justify unauthorised

A party, against whom allegations of mala fides are levelled, is to be

Failure to call a woman for interview, having licence for bus

Dismissed employee of air caterer, caught carrying chocolates, is to

No leniency for the unauthorizeds and wilful absence.

Transfer as per contract of employment not improper.

conductor, will amount to discrimination.

Punishment based on defective enquiry is to be quashed.

Punishment imposed after fair enquiry, not to be reviewed.

# A PRACTICAL JOURNAL FOR HUMAN RESOURCES MANAGEMENT

#### MONTHLY

employees.

faulted with.

absence.

pleaded.

## IMPORTANT JUDGMENTS

Karn, HC 595

Bom. HC 609

Gui. HC 653

Cal. HC 589

Jhar. HC 574

Karn. HC 593

Ker. HC 577

Mad. HC 586

Mad. HC 585

Mad. HC 582

Del. HC 564

Supreme Court 654

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Karn, HC 642

MD HC 570

Karn HC 591

п		Abusing and physically nurting the superior would justify distillabal.		one unit.
١		Bom. HC 609		Standing Orders, when contrary to bye-laws, will be illegal.
	•	Hotel Manager, threatened by workers, can seek Police help.		Guj. HC 611
١		Ker. HC 578		Modernisation, not resulting in reduction of workers, would not
١	•	Gratuity can be adjusted towards loan if agreement so provides.		attract section 9-A of the Industrial Disputes Act. Mad. HC 626
1	7	AII. HC 637		Enquiry not to be vitiated merely for delay of its conclusion.
١	•	Dismissal justified on habitual unauthorizeds absence. Karn. HC 646		Supreme Court 654
	•	Transfer of employee is prerogative of employer. Mad. HC 585		Abandonment not valid if demand not rebutted and offers of
١	0	Clubbing establishments, without providing report of the inspector,		resumption of duty not made. Del. HC 562
	9000	is to be set aside. Del. HC 631		Strict rules of evidence not applicable in the proceedings before the
	0	Providing employment to a disabled employee will not absolve		Labour Court. HP HC 572
í		employer from paying accident compensation. Ori. HC 648		Interference by the High Court not proper when the lower
1	•	Cheating and breach of trust, etc. would justify dismissal.		authorities have not acted in violation of principles of natura
1		Del. HC 567		Ibox IIO E7/
		Dismissal, after holding of an enquiry, is not to be interfered.		justice.  Jilai. He 3/4  Misappropriation and insubordination would justify dismissal.
	68	Dol UC 605		I Misannronriation and insuppreniation would justify distilissal.

Transfer not to be set aside in the absence of mala fides. Ker. HC 577 Enquiry to be set aside if violative of principles of natural justice.

Reinstatement is proper when approval for dismissal is not

EPFO has to prove functional integrality for clubbing of more than

obtained during pendency of industrial dispute.

Mad. HC 586 Courts rarely interfere in matters of transfer. Mad. HC 585 Working Journalists on monthly wages are to be covered under the

Ker. HC 614 provident fund. All. HC 613 Calculation of gratuity has to be on last drawn wages.

Erroneous past conduct, if overlooked by the Tribunal, would set Del. HC 620 aside reinstatement.

A workman cannot be punished during pendency of industrial Karn, HC 642 dispute without approval of concerned authority.

Clubbing for provident fund cover is not proper if a single person Del. HC 631 owns more than one establishment.

Adjustment of loan against gratuity is not prohibited by section 4(6) All. HC 637 of Payment of Gratuity Act.

Cost may be imposed on APFO challenging order of EPF Appellate Gui. HC 653 Tribunal.

Enquiry is to resume from where it was vitiated. Supreme Court 654 Full back-wages will not be proper sans supporting reasons.

Del. HC 562 Only perverse Award will be interfered by High Court. Del. HC 567 Launching prosecution of principal employer for non-payment of Karn. HC 595 bonus to the workers of contractor is to be quashed. Non-supply of enquiry report to the delinquent would violate the Mad. HC 586 principles of natural justice.

Ker. HC 614 Tribunal not justified in declining approval for dismissal of a bus conductor possessing twelve used tickets. Del. HC 620

EPFO is empowered to determine relationship between the parties.

High Court can direct the police protection to employee if it fails to Mad. HC 626 provide

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No 6 **JUNE 2013** VOL. XLIV

STATUTE (central)

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Non-identification of beneficiaries will not justify levy of damages Minimum wages cannot be the basic of determining contributions for part-time employees

# YYZRYY

JS-161

What everyone should know about

## (21)ARASSMENT AT WOR

Problems & their

JS-167 (27)

No reinstatement unless contract labour system is sham Failure to take approval - consequences of Self-employment disentitles for wages during pendency of the proceedings

Artificial breaks - fixed term appointments not justified Procedure for forfeiture of gratuity

Forfeiture of gratuityon retirement not permissible

Dismissal for habitual absence

JS-172 Factories Act Related Problems & their Solutions (32)

# **Employees' State Insurance Related**

Problems & their Solutions

Related

JS-174 (34)

JS-181

(41)

JS-173

(33)

DIGEST OF

Determining PF dues on inspector report - to be quashed Conveyance, medical, washing allowance and attendance incentive

not necessarily 'basic wages' to attract contributions

# (46)

- Revised Minimum Rates of Wages in Delhi w.e.f. 1.4.2013
- Revised Minimum Rates of Wages in UP from 1.4.2013 to 30.9.2013
- Employees' Provident Fund Organisation



Campus recruitments by PSU banks sans notification to employment exchanges would not be proper

JS-166 (26)

(35)

# JS-175

Pro-forma suggested for-

- Settlement whereby the employees accept increase in their wages and agree to withdraw their demands pending before Labour Court/Industrial Tribunal
- · Certificate of compliance & undertaking by the contractor in favour of principal employer
- · Leave application form
- · No dues certificate

JS-191

(51)

We always face problem that people join the organisation, work for sometime and then leave. What practices one should adopt which make people stay? Can you advise on this issue which generally every organisation faces in one or the other form?

What are few symptoms which should be caputred by HR for him to understand that now time has come to move on? Can you indicate something on this aspect?

There are lots of saying in the management world that employees satisfaction is more important than customer satisfaction. But in service organisations it is customer satisfaction which is put at priority. As management expert what do you think?

In spite of taking best care of employees, sometimes it is disgusting to find that still people leave the organisation that shatter all beliefs of good people management practices. What do you think, how HR should take up this issue?

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# REPORTER Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

A PRACTICAL JOURNAL FOR HUMAN RESOURCES MANAGEMENT

MONTHLY

# IMPORTANT JUDGMENTS

Rs. 245/- per issue

•	Unfit bus driver to be paid compensation instead of job.	•	Gratuity cannot be denied even if the employee has waived his right in a
•	Supreme Court 673	-	settlement. Ori. HC 745
	No employee has a right to be posted at one place. HP HC 709	•	Controlling Authority will not enforce private gratuity scheme.
100	A part-time sweeper is a 'workman' under ID Act. P&H HC 697		Mad. HC 734
•	Gratuity can be adjusted against dues when the employee has given an	•	Neither court nor executive can frame a scheme to regularise persons.
•	unconditional consent. Cal. HC 774		Del. HC 748
			No interference by the Court when misconduct is proved in enquiry.
•	A District Manager is not a 'workman'.  Del. HC 681  Gratuity cannot be withheld for non-vacating the quarters. MP HC 777		AP HC 751
•		•	Termination sans retrenchment compensation is illegal. All. HC 761
•	Reinstatement is not a rule when compensation is not paid. All. HC 761	•	Confession of misappropriation will result into loss of confidence.
•	Challenging an accepted resignation after receiving dues cannot be permitted.  All. HC 699		All. HC 760
	Disallowing advocate's representation in enquiry not violative of	•	Bonus, back-wages, earned/festival leave can't be allowed under
•	natural justice.  All. HC 700		section 33C (2) of the ID Act. Guj. HC 768
	Abandonment of job depends upon intention of employee. Del. HC 675	•	Setting aside the dismissal of bus conductor, guilty of carrying
	Deposit of awarded gratuity is must for filing appeal. Mad. HC 730		passengers without tickets, not proper. All. HC 762
	Challenging resignation after 26 days of acceptance not permitted.	•	Damages for default of PF dues to be levied at uniform rate.  P&HHC 771
	Del. HC 720		
	Removal for producing fake hotel bills is appropriate. Del. HC 757	•	Compensation in lieu of reinstatement would be appropriate.
	Termination of fixed or ad hoc appointment is not retrenchment.		
	Del. HC 687	•	An Award of compensation under the Payment of Wages Act can be
	Workmen temporarily engaged can't be regularised. Del. HC 748		modified by the High Court.  All. HC 698  Termination of fixed-term employee will not be illegal.  Del. HC 687
	Workmen temporarily engaged can the regularised.	•	
	Dismissal of a conductor for misappropriation not to be interfered.  Bom. HC 729	•	Principle of "no work no pay" applies for denial of pay on absence.  Karn. HC 718
1			The second secon
•	Issuance of unrelated tickets justifies dismissal.  APHC 755  Acquittal does not entitle to full back-wages for suspension period.	•	I I dilater is within the exclusive demand of the employer
	Karn. HC 718	•	Reinstatement of a daily wager raising dispute after seven years to be
1	ESI Act applies on architects firm. Ker. HC 715		quashed.  Termination sans compliance of legal formalities results into
•		•	Dal UC 726
•	Gainful employment will include self-employment.  Mad. HC 705  Amendment not to be rejected on technical ground.  Mad. HC 705		reinstatement.  While imparting justice, equity and passion have no place. Del. HC 720
•			An employee deliberately causing financial loss to employer deserves
	Alleging denial of proper opportunity is untenable when delinquent	•	to be prosecuted.  AP HC 755
1	failed to participate in enquiry.  Mad. HC 707  Under section 11-A of ID Act, Labour Court can modify punishment.		Writ Court not to interfere with findings of facts by the Enquiry Officer.
	Under section 11-A of 1D Act, Labour Court can intumy pullishinem.  Mad. HC 707		APHC 751
16			Reinstatement relates back to the date of initial appointment.
	Transfer cannot be stalled for personal inconvenience of employee.  HPHC 709	•	Raj. HC 765
1	Evidence dehors pleadings can't be tenable.  Bom. HC 692		Rules of evidence, as applicable in criminal trial, are not applicable in
1	Finding of the Labour Court will be perverse if not based on evidence		departmental proceedings.  All. HC 762
	Pom UC COO		Raising an industrial dispute after 14 years is not tenable. All. HC 699
	recorded.  High Court interferes when there is perversity in the Award.		Dismissal of a bank employee for embezzlement is not to be interfered.
1	High Court interferes when there is perversity in the Award.	1	All. HC 700



A.	STATUTE (central)	COMPLIANCE	LAST DATE
	Contract Labour (R&A) Act, 1970	Half-yearly return by Contractor (in duplicate)	30th
	Employees' Provident Funds & Misc. Provisions Act, 1952		15th
	Employees' State Insurance Act, 1948	Deposit of ESI contribution	21st
Fa	actories Act, 1948	Half-yearly Return	15th

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Principal employer not liable to JS-193 (21) pay to contractor's employees

# LABOUR Problems & their

JS-197 (25)

Attendance on bio-metric system no change in conditions of service Non-obtaining of licence by the contractor - consequences of Relationship of employer and employee between the workers of contractor and principal employer Apprentice - not entitled to employment Applicability of Contract Labour (R&A) Act on an establishment not being an 'industry' Compensation under the Employees' Compensation Act, 1923

Protected workman - when deemed to have been declared

Factories Act Related **Problems & their Solutions** 

JS-201 (29)

**Employees' State Insurance** Related Problems & their Solutions

JS-202 (30)

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Damages reduced to 5% when delay was not deliberate Minimum wages can be split for provident fund contributions Nuns rendering divine services - not employees to be covered under the Act

Assessment of dues based on inspector report - to be quashed Damages levied for delay in payment not to be interfered Determination of money by non-application of mind - untenable

# JS-195



Resignation must be voluntary

JS-204 (32)

(23)

is not

A PARKING LOT JS-214

it certainly deserves more attention

(42)

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(43)



Agreement between an employer and employee whereby the employer gives loan to the employee to buy a house

Undertaking by an employee in favour of M/s..... 'employer' for adjustment of gratuity and provident fund

Charge-sheet to an employee for hacking a computer system

· Warning to an employee for publishing information which is obscene in electric form



We have small business employing about 70 persons operating at minimal profits. After every 3-4 months some or the other employee standup and ask for salary increase. If salary is not increased, there is every possibility of his leaving the company. Is it not blackmail by employee? How should I come out of this problem?

I think new employee should be helped learning about culture and making him integrated with the organisation. How management can help in this process? I seek your expert advice.

It is normally felt that performance appraisal process does not work in a way far from subjectivity. Inconsistency and subjectivity are two identified blocks which make this process controversial. How you can define a successful performance appraisal process? You have vast experience of managing people and guiding

organisations. You must have also confronted with good and bad teams in the organisation. By your experience what can be the few principles of highly effective teams?

# Chief Editor: Advocate H.L. Kumar **Editor: Advocate Gaurav Kumar**

A PRACTICAL JOURNAL FOR RESOURCES MANAGEMENT

#### MONTHLY

# IMPORTANT JUDGMENTS

Rs. 245/- per issue

Г	5	VRS benefit cannot be claimed as of right.  Supreme Court 785	•	A plea not taken at first instance will not be permitted at belated stage.
١		Approval is not necessary for dismissal of workman with less than 240		Guj. HC 800
ľ	1	0 707	•	Judicial Authorities should be sympathetic when litigants appear in
1		days service. Supreme Court 187  Even after completing 240 days service, a probationer has no right of		person. Karn. HC 819
ľ	•	0-1 110 000	•	Delayed payment of gratuity will attract interest. Guj. HC 803 and 817
l		permanency.  Employer's share to EPF contribution can be reduced to Rs.6,500.		Employers' rules can't be for lesser gratuity than in the Act.
ľ	1	Gui. HC 806		Ori. HC 810
ł		Financial crunch will justify reduction of damages for delayed deposit	•	An employee is not entitled to back-wages for the contingent period.
ľ	•	of EPF dues. Ker. HC 833		Del. HC 793
L		Travelling allowance included for calculation of gratuity. Guj. HC 803		Damage for delayed deposit of provident fund dues is not mandatory.
ľ		Apprentices on regular work would be 'employees' to be covered under		Ker. HC 833
١	•	Provident Fund Act.  Mad. HC 849	•	Registrar of Trade Unions can cancel the registration of a union.
ı		Person responsible for the company's business is to be prosecuted for		AII. HC 823
ı	•	non-payment of ESI contributions. Ker. HC 885	•	Difference of pay to workers can be granted under section 33-C (i) of
1		Adjudicator is empowered with ancillary or incidental matters.		the ID Act. Chhat. HC 826
ı	•	Karn. HC 819	•	Probationary services can be terminated before or after expiry of initial
ı		Lump sum compensation, in lieu of reinstatement, not debars right to		or extended period. Del. HC 839
1	•	0: 110.002		Standard of evidence in criminal trial and the enquiries is entirely
ı		gratury.		different. Mad. HC 843
١	•	ocarcity of fand not justify for paying granting.		Insurance Court will not decide a criminal offence. Ker. HC 885
١	•	Section 9A of I D Act, 1947 not warrants reduction of employer's share of provident fund to Bs. 6.500.		Qualification(s) for promotion cannot be introduced as a fresh
١		of provident fund to Rs.6,500. Guj. HC 806  Gratuity Act, 1972 is not restricted to only commercial establishments.		requirement. Del. HC 854
١	•	Gratuity Act, 1972 is not restricted to only commercial establishments.  Ori. HC 810		Adverse inference will be drawn when Management failed to produce
1		Principal employer is liable to pay accident compensation.		attendance register. All. HC 858
1	•	Bom. HC 799		Reference for adjudication for a dispute raised after 22 years is to be
١				quashed. All. HC 864
١	•	Labour Court should decide all the points together.  All. HC 820 Insurance Company, receiving premium for a package policy, cannot		Nature of duties not designation is the criterion to determine the status
١	•			of 'workman'. All. HC 879
		escape liability of a loader.  Even if a worker has worked beyond period of probation, it would not		Compensation Commissioner can't review its own order. All. HC 872
	•	fustify confirmation.  Del. HC 839		Statutory entitlements cannot be curtailed by framing Rules.
		Termination of probationary services before confirmation would not		Ori. HC 810
	•	amount to retrenchment. Del. HC 839		Damages depend upon discretion of officer by reasoned order.
		Dismissal of bank employee will not be modified under section 11A of		Ker. HC 833
	•	Mad UC 042		Tribunal justified in rejecting to decide preliminary issue. All. HC 820
		ID Act.		Restoration of an ex-parte order can be allowed by Compensation
	•	When a bank employee loses confidence, his dismissal cannot be set		Commissioner. All. HC 876
-		aside. Wad. HC 643 Labour Court is empowered to grant relief even when not demanded by		Unless confirmed in writing, a probationer continues to be on
1	•			probation. Del. HC 839 and All HC 856
-		an employee.  All. HC 856  Assistant Chemist, not exercising the supervisory powers, would be a		The state of the s
-		All UC 070		Scope of writ is restricted on factual finding Guj. HC 800
		workman.	Paul	

# PLRON

STATUTE (central)

COMPLIANCE

LAST DATE



Employees' Provident Funds & Misc. Provisions Act. 1952

Remittance of contributions

15th

Employees' State Insurance Act, 1948

Deposit of ESI contribution

21st

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JS-221

(25)

### HECKLIST

FOR PRINCIPAL EMPLOYER TO ENGAGE

2 (21) RACT LABOUR

# Problems & their

Consequences on failure to obtain approval for dismissal/discharge Limitation for filing appeal - on conditions thereto under the Gratuity

Settlement with union for individual worker's right - not valid

Settlement to prevail even after expiry of specified period

Workman - guidelines to determine Standing orders & educational institution Enquiry after retirement of an employee



# **Problems & their Solutions**

JS-224 (28)

# **Employees' State Insurance Related**

Problems & their Solutions



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EPF & Pension Related Problems & their Solutions

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JS-233 (37)

Financial condition of establishment to be considered while levying damages for delayed payment of EPF dues

APFC to determine money by making enquiry and also to identify the beneficiaries

Coverage of establishments on EO report - not proper Section 7A proceedings be held afresh without being influenced by the deposition of enforcement officer

#### S NOTIFICATIONS 18-236 AMENDMENTS, & (40)DEVELOPMENTS

- . Employees' Provident Fund Organisation Modification in Para 16(5)(b) of EPS under EPF&MP Act (20.6.2013)
- Employees' Provident Fund Scheme Transfer claim Form 13 -Revised



· Non-disclosure of offence under Factories Act would quash the complaint

JS-220 (24)

(31)



Pro-forma suggested for-

Annual maintenance of computer (AMC) software application

· Notices/letters to be sent to an employee absenting from duty without prior sanction of leave



We hear that people need to be motivated all the times to make business successful. At the same time it is also said that managers cannot motivate employees. It is internal desire of a person which keeps him motivated. In the present complex life style, where stress unavoidable, how one can keep himself inspired or motivated at work? Can you give some tips?

We have few employees in different departments who are otherwise competent but chronic complainers. This attitude of employees affects the morale of departmental heads so they are normally ignored by the managers. Is it the correct method? How should we handle such employees?

What are the common mistakes HR persons generally make at work and don't realize the impact? Since you are associated with many organizations and HR professionals throughout the country as HR expert, can you pl. share your experience?

# REPORTER Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

A PRACTICAL JOURNAL FOR HUMAN RESOURCES MANAGEMENT

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### IMPORTANT JUDGMENTS

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	IIII OITIAITI	,	119. 710/- hei 1231
	Disciplinary Authority must record reasons for disagreeing with Enquiry Officer.  Partners are not to be included in a firm for coverage under Provident Fund Act.  All. HC 981  A Personnel Manager of a Company is not a 'workman' under I.D. Act.  Del. HC 912  Enquiry issue must be decided at first instance.  All. HC 924  Evidence Act not applicable in industrial proceedings.  APHC 927  Unauthorised & habitual absence is a serious misconduct to justify dismissal.  Karn. HC 970  Workers & Management will be bound by Award of Labour Court.  Mad. HC 962  Criminal trial and enquiry proceedings are entirely different.  Guj. HC 952  Enquiry proceeding sans prescribed procedure will be vitiated.  Cal. HC 938  25% towards labour for ESI contribution when payment includes material also is justified.  Bom. HC 916  Compensation not reinstatement is appropriate relief to a daily wager.  Ori. HC 967  Reinstatement not appropriate for a workman caught stealing property of establishment.  All. HC 925  Prosecution for provident fund can't be quashed at initial stage.  Cal. HC 934  Dismissal justified for fraud and misappropriation, etc.  Jhar. HC 996  Principal employer has primary duty to pay ESI contribution.  Karn. HC 991  Prosecution for non-implementation of the Award is untenable when reinstated workman never reported to join.  Jhar. HC 999  Assaulting passenger by bus driver will justify dismissal.  Del. HC 995  Reinstatement is to be set aside in the absence of evidence.	• • • • • • • • • • • • •	A claim rejected in Civil Court can't be raised under Industria Disputes Act.  Enquiry Committee cannot act as Presenting Officer in enquir Cal. HC 938  Loaders/unloaders in regular activity are coverable under Exact.  Employer not employee has to lead evidence first in the enquiry.  Reasons are necessary if Labour Court modifies punishment Mad. HC 968  Reinstatement with back-wages will not be appropriate whe termination is held illegal.  Ori. HC 967  Temporary misappropriation amounts to breach of trus Cal. HC 934  Area Sales Manager will not be a 'workman' under I.D. Act All. HC 922  Existence of employer-employee relationship to be decided a preliminary issue.  Ker. HC 993  Tribunal justified in granting status quo to bus drivers/conductor engaged through contractor.  Employer-employee relationship can be established documentary evidence.  Compensation only when death caused in accident Gau. HC 948  Opinion of hand-writing expert can prove the forget Mad. HC 968  Raising industrial dispute after 29 years is rightly to be rejected.  Performing work of regular nature is to be covered by ESI Accident Schenes.  And HC 968  Reinstatement is not proper on dismissal for unauthorise absence.  And HC 968  And HC 968
	Assaulting passenger by bus driver will justify dismissal.  Del. HC 995  Reinstatement is to be set aside in the absence of evidence.  APHC 927	•	enquiry. Cal. HC 942
•	Normal death even during the course of employment will not attract accident compensation.  Gau. HC 946 Interference by Labour Court in dismissal after enquiry not justified.  Karn. HC 970 Termination of service can be challenged in Labour Court only	•	service, etc.  Ori. HC 967 An enquiry is not vitiated merely one copy of the order sheet wa not provided.  All. HC 925 A Director can escape from prosecution for non-deposit of EPF
•	after raising dispute before Conciliation Officer. Mad. HC 962 Enquiry will not vitiate for non-supply of enquiry report to the delinquent.  Jhar. HC 956		he proves to be not concerned.  No interference by High Court in absence of allegations about violation of natural justice.  Cal. HC 934  About 1934  Jhar. HC 986

probationer.

Guj. HC 954

already retired.

Additional gratuity out of settlement not payable to an employee

Ker. HC 993

A workman may be temporary, permanent employee or even a

# COMPLIANCE

STATUTE (central)

COMPLIANCE

LAST DATE



Employees' Provident Funds & Misc. Provisions Act, 1952

Remittance of contributions

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# ONTENTS

**EMPLOYERS** MUST HAVE ADEQUATE

IN CIVILISED SOCIETY

Problems & their olutions JS-245

JS-241

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Non-registration of establishment under the Contract Labour (R&A)

Act, 1970 - consequence of Workers' right to strike

Prohibition of contract labour

Relationship of employer and employees Payment of gratuity on gross negligence Calculation of bonus - components

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JS-248

Employees' State Insurance Related 🦲



Problems & their Solutions

& Pension Related



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JS-255

No liability for payment of contributions can be fixed without calling the employer

Assessment of EPF dues without ascertaining beneficiaries to be quashed

Clubbing three establishments for coverage under the Act - to be Determination of legal dues sans identification of beneficiaries not

No relief by tribunal when no record produced about excluded

Ex-parte order, violative of natural justice, is to be set aside

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- Employees' Provident Fund Organisation Enhancement in rate of fixed medical allowance (13.6.2013)
- Employees' Provident Fund Organisation Implementation of direct cash transfer (27.5.2013 & 25.6.2013)
- Kerala Shops and Commercial Establishments Act, 1960 (7.6.2013)
- Industrial Employment (Standing Orders) Punjab (Haryana Amendment) Rules, 2013
- Revised Minimum Rates of Wages in Maharashtra from 1.7.2013 to 31.12.2013



JS-251 (31)

Pro-forma suggested for-

Appointment as Marketing Executive

- · Charge-sheet for absence when application for sanction of leave has been refused and also the employee is in the habit of absenting
- Order of revocation of suspension when the worker is exonerated of the charge/charges
- · Bond to a company with surety for securing the faithful services of an employee as a storekeeper
- Warning letter for over-staying leave





I have joined the organisation few months back but am very much disturbed with the office politics. People here are always busy in making others let down. Please guide me how can I keep myself away from this dirty politics and do my job well?

There is news of Bajaj plant strike by workers. Workers have demanded free shares of the company from the management. I am told that it is about stock options. I want to understand what are stock options? Can you please clarify?

My organisation is new and I have been given the task of developing vision and mission of the company. I myself is not aware about the difference between vision and mission. Can you please throw some light on these two words?

My boss is fully unaware of HR. Earlier he was technical head and because he could not deliver results, management shifted him to HR dept. How should I handle him?

# LABOUR LAW REPORTER Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

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#### MONTHLY

## **IMPORTANT JUDGMENTS**

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•	Reinstatement is not a rule	when termination of a workman is
	held illegal.	Supreme Court 1009

- Reinstatement can be converted into compensation.

  Supreme Court 1013
- Termination of fixed-period workman would not be retrenchment.

  Supreme Court 1042
- Sales incentive will be 'wages' for ESI contributions.

  Ker. HC 1038
- When an insured employee on duty dies of heart attack, his widow would be entitled to benefits under ESI Act.

  Bom. HC 1106
- No organization can function if transfers are carried at the convenience of employees.

  Del. HC 1015
- Dishonesty & misappropriation are grave and serious misconducts.

  Del. HC 1017
- Violation of natural justice can't be pleaded by one who fails to participate in enquiry.

  Del. HC 1017
  - Internal rules can't prevail over Gratuity Act.

    Del. HC 1016
- Proofs in criminal case are rigid but not in domestic enquiry.

  Del. HC 1017
- Specific instances are must for serious misconducts.

  Ker. HC 1026
- An ex-parte order passed by the EPF Authority, without hearing the employer, will be set aside.

  P&H HC 1021
- Compensation is not proper when dismissal is legal.

  Mad. HC 1028
- Ex-parte enquiry is appropriate when delinquent fails to appear.

  Del. HC 1044
- Staging demonstration is protected by Article 19 (1)(c) of Constitution of India.

  Mad. HC 1065
- RPFC is expected to be strict in recovery of the dues payable but should act in bonafide.

   Gui. HC 1091
- Long and unblemished past service is relevant for awarding punishment.

  Ker. HC 1026
- Transfer of an employee is an incident of service. Guj. HC 1077
- A transfer is not violative of section 33-A of the Industrial Disputes Act.

  Guj. HC 1077

- A financially crippled establishment can't be burdened with damages under EPF & MP Act.

  Ker. HC 1083
- An adjudicator can't act as recovery officer. Ker. HC 1083
- Loss of earning capacity of an employee is criterion for awarding accident compensation.
- 'Equal pay for equal work' can't be claimed u/s 33C (2) of I.D. Act.
- Employer is to pay Rs.50.000/ cost on delaying accident compensation.

  All. HC 1031
- No retrenchment compensation when dismissal is justified.

  All. HC 1035
- No back-wages when reinstated workman fails to report.

  Mad. HC 1058
- Reinstatement is proper on termination without enquiry.
   Mad. HC 1058
- Forfeiture of gratuity only on termination for prescribed misconducts.

  Ker. HC 1024
- An employer knows best where the services of an employee can be used more effectively.

  Del. HC 1015
- Transfer cannot be stalled unless any legal right is adversely affected.

  Del. HC 1015
- Employer can't adjust any dues from gratuity. Del. HC 1016
- In banking services, integrity of employees is very important.

  Del. HC 1017
- Dismissal justified for preventing ingress/egress of willing workmen, materials and extending threat to senior(s).
   Mad. HC 1028
- Complaint for violation of Contract Labour (R&A) Act must be within three months.

  AP HC 1057
- Reinstatement is no longer a rule of thumb. Del. HC 1051
- A part-time is also protected by Industrial Disputes Act. P&HHC 1056
- Necessity of transfer of an employee is to be decided by the employer.

  Del. HC 1015
- No bonus by a new establishment for the first five years without profit.

  P&H HC 1053
- Enquiry not vitiated merely for non-supply of documents with charge-sheet.

  Del. HC 1044
- Peaceful demonstration will not amount to misconduct.

  Mad. HC 1065

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OCTOBER 2013



Employees' Provident Funds & Misc. Provisions Act, 1952 Remittance of contributions

15th

Employees' State Insurance Act, 1948

Deposit of ESI contribution

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bligations of Employers (21)

under

JS-265

PAYMENT OF GRATUITY ACT

# LABOUR Problems & their Solutions

JS-269 (25)

Gratuity - whether payable on incentive Break in service and gratuity Rectification in date of birth - permissibility for Resignation - its withdrawal when it is

Obtaining injunction for restraining strike

Challenging retrenchment despite receiving compensation - legality

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JS-273 (29)

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JS-279 (35)

Identification of employees is must for determination of money to be paid by the employer

Damages as levied not proper when the payment does not go to identified beneficiaries

Determination of money on the basis of inspector's report to cover apprentices is to be quashed

Levy of damages and interest for delayed payment when not wilful liable to be quashed

### CONTRACT LABOUR SYSTEM

is Panacea for

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UNEMMPLOYMENT

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DEVELOPMENTS Revised Minimum Rates of Wages of the Registered Security

- Guards/Officers from 1.7.2013 to 31.12.2013 Mumbai & Thane
- Employees' Provident Fund Organisation Supreme Court upholding the dues u/s 7Q & 14B under EPF & MP Act. 1952 (26.8.2013)

# FORMS\*\* PRECEDEN JS-275

Pro-forma suggested for-

- · Agreement with a canteen contractor
- · An order of revocation of suspension when the worker is exonerated of the charge/charges
- Warning letter for over-staying leave
- A charge-sheet to an employee who has got his attendance card punched by a proxy and received wages for no work



JS-287 (43)

(31)

One fo my colleagues has become my senior. He was working equal to my level sometime back. Since starting, I don't know how I developed disliking against him. Now it has become more difficult for me to work with him when he is in a senior role. How should I handle the situation?

What makes workplace vibrant and employees motivating? From an expert like you I look forward some concrete tips to understand

Can you please tell me what few requirements for HR person to

become successful are?

We are in the process fo designing variable pay structure for employees. Can you please guide us what elements should be consider and how you should go about?

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[	Reporting duty, as drunk, will justify dismissal.  Supreme Court 1174 Show-cause notice not required before termination of a		No hearing required while referring a dispute.  All. HC 1230 Denial of opportunity to employer for cross-examination of EO &
	probationer. Del. HC 1125		APFC violates natural justice. Gui. HC 1171
1	An employer will pay gratuity when due within 30 days.		Statements of witnesses in the enquiry be recorded separately i.e.
1	Bom. HC 1184		not in the presence of one another.  AP HC 1168
1	Dismissal justified on failure to comply with transfer order.		Misappropriation by employee justifies his dismissal. All, HC 1197
1	Del. HC 1122		Notice u/s 9A of Industrial Disputes Act is imperative on
ľ	Gratuity can't be forfeited merely for incorrect date of birth.		retrenchment due to rationalization.  Del. HC 1192
L	Reinstatement for non-compliance of 25F of I.D. Act will not be		Notice of change is not necessary for revival of beneficial Service
Г	interfered. Supreme Court 1162		Rules. Cal. HC 1218
1	Supreme Court will not interfere in factual finding of Tribunal as		Transfer stipulated in contract of employment not to be vitiated.
100	upheld by High Court. Supreme Court 1161		Del. HC 1122
	Labour Court/Tribunal has to confine its jurisdiction only to terms of		Compensation, instead of reinstatement, is appropriate to a daily
			wager. All. HC 1138
١,	ESI returns showing 20 employees rightly relied for covering under		Regularization of a part-time sweeper justified working for long
Г	Provident Fund Act.  Bom. HC 1127		time. All. HC 1140
	A reference for adjudication has to reflect the exact nature of dispute.		Back-wages on reinstatement is not automatic. Guj. HC 1149
	Supreme Court 1157		Employer has to assess the performance of a probationer.
	Section 7A order of RPFC will be quashed when copy of EO's report		Del. HC 1125
	not provided to employer. Guj. HC 1190		Confirmation of a probationer has to be in writing.
			Del. HC 1125
1	cause notice will be quashed.  Mad. HC 1188		Failures of employer to produce record will not nullify coverage
	Compensation is to be given for disease caused during employment.		under provident fund.  Bom. HC 1127
	Supreme Court 1121	•	Writ is tenable for quashing irregularity by EPF Authority.
•	Regular enquiry is not necessary on admission of misconduct.		Guj. HC 1190
	Supreme Court 1174		Proceedings conducted by the Provident Fund Authority to be
•	Engaging part-time worker for regular jobs is unfair labour		quashed for non-furnishing copy of the report. Guj. HC 1171
	practice. All. HC 1140		Reliance on the statements during police custody is erroneous.
•	De novo enquiry is not permissible when Enquiry Officer exonerates		AP HC 1168
	delinquent. Del. HC 1182	•	Non-supply of documents on the basis of which ESI contributions
•	No regularization of 35,000 contract workers as engaged for non-		have been determined is violative of natural justice. Bom. HC 1183
	sanctioned posts. Del. HC 1178	•	In a school, a temple of learning, even a single misconduct would
•	interim order by tribunar not to be interiored by riigh court.		justify removal. Supreme Court 1174
	Ker. HC 1204		No violation of natural justice when delinquent fails to participate in
٩	An employee, either temporary or probationer, will be a		enquiry. All. HC 1197
	'workman'. Ker. HC 1208		Abandonment presumed when the workman voluntarily stopped
•	oost may be imposed on all I Matherities for hardsoning the banker.		coming due to transfer of her husband. Rai, HC 1201
•	Guj. HC 1210		Waiver of pre-deposit for appeal is prerogative of EPF Appellate
	Compaisory retriement for sexual narassinent not to be interfered.		Tribunal. Ker. HC 1204
	A resignation can be withdrawn before its acceptance is		Employer-employee relationship should be decided as a preliminary
	communicated.  Bom. HC 1129		issue. Ker. HC 1208
	Termination on absence sans enquiry will be illegal.		Reinstatement is proper in the absence of material stating
	Gui. HC 1149		abandonment. HP HC 1206
			Componentian is justified when dead body of forcet guard was found

orded separately i.e. AP HC 1168 issal. All. HC 1197 is imperative on Del. HC 1192 of beneficial Service Cal. HC 1218 t not to be vitiated. Del. HC 1122 propriate to a daily All. HC 1138 ed working for long All. HC 1140 itic. Guj. HC 1149 of a probationer. Del. HC 1125 be in writing. Del. HC 1125 not nullify coverage Bom. HC 1127 by EPF Authority. Guj. HC 1190 nd Authority to be Guj. HC 1171 stody is erroneous. AP HC 1168 ch ESI contributions ce. Born. HC 1183 e misconduct would Supreme Court 1174 ails to participate in All. HC 1197 voluntarily stopped Raj. HC 1201 e of EPF Appellate Ker. HC 1204 ded as a preliminary Ker. HC 1208 material stating HP HC 1206 Compensation is justified when dead body of forest guard was found. Gau. HC 1146 Bom. HC 1221 Confirmation is not automatic even on expiry of probation period. Unless perverse, an Award of Labour Court not to be interfered. Del. HC 1125 Del. HC 1122

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# ROMPLION

STATUTE (central)

COMPLIANCE

LAST DATE



Employees' Provident Funds & Misc. Provisions Act, 1952 Remittance of contributions

15th

Employees' State Insurance Act, 1948

Deposit of ESI contribution

21st

# REPORTER

#### NOT JUST PROMPT **REPORTING & LATEST** AMENDMENTS - BUT,

Unlike other Labour Journals/ Reporters, the judgments pertaining to Armed Forces, Police and government servants are not given in the Labour Law Reporter to swell up the volume

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### **ESI SCHEM**

**MUST NOT DEVIATE FROM ITS** JS-289 **BASIC OBJECTIVE OF** (21)

SOCIAL WELFARE

# Problems & their Solution

Doctor not a workman under the Industrial Disputes Act Raising industrial dispute after receiving full and final amount on acceptance of VRS option Break in service for gratuity - interpretation of Temporary embezzlement - a serious misconduct No trade union activities during working hours Liability for payment of gratuity by purchaser of an



JS-294

(26)

JS-291

(23)

Factories Act Problems & their Solutions

JS-295 Employees' State Insurance Related (27)Problems & their Solutions

**Problems & their Solutions** 

JS-296 (28)

DIGEST OF

establishment

### JS-301 (33)

Rs.16,48,72,927 cannot be recovered for unidentified workers of contractor(s)

A private bank - not coverable under EPF&MP Act Unidentified Mathadis not 'employees' to be covered under

Damages for delay deposit by sick establishment - to be guashed Principal employer - not liable to enroll employees of security contractor

#### MOTIFICATIONS JS-305 AMENDMENTS, & (37)**EVELOPMENTS**

- Revised Minimum Rates of Wages in Delhi w.e.f. 1.10.13
- Revised Dearness Allowance in Uttar Pradesh from 1.10.13 to 31.3.14
- Revised Minimum Rates of Wages in Punjab w.e.f. 1.9.13
- Employees' State Insurance (Central) Amendment Rules, 2013
- · Employees' State Insurance (General) (Amendment) Regulations, 2013 (29.4.13)
- · The Industrial Employment (Standing Orders) Punjab (Haryana Amendment) Rules, 2013 (6.8.13)



Pro-forma suggested for-

- An order of appointment of management-representative in a domestic/department enquiry
- A letter to a charge-sheeted workman intimating the appointment of enquiry officer since he has failed to submit his explanation within the specified period
- An enquiry officer when an employee, despite receipt of chargesheet, fails to submit his explanation within the stipulated period



My repeated meetings with managers do not bring results. They are not able to driver employees and motivate them. Can you guide me what should I do? I am regular reader of your column and found powerful inputs.

(43)

I have a good team of subordinates but afraid of delegating tasks too them, don't know why? Can you help me in pulling out of this

In our organisation all of a sudden complaints of sexual harassment have increased. We have zero tolerance policy in these matters and emplyees are fired quickly. Other side of the issue is that now male employees have expressed resentment over one side action and attrition rate is increased. How should I handle this situation?

# LABOUR LAW REPORTER Chief Editor: Advocate H.L. Kumar Editor: Advocate Gaurav Kumar

A PRACTICAL JOURNAL FOR
HUMAN
RESOURCES
MANAGEMENT

#### MONTHLY

## **IMPORTANT JUDGMENTS**

Rs. 270/- per issue

- Person incharge of business, not the employer, can be prosecuted for violation under Provident Fund Act. Kam. HC 1258
- Termination by Appellate Authority not legal since the right to appeal will be defeated.

  Supreme Court 1233
- Prosecution under Factories Act to be quashed when the deceased suffered injuries due to his own negligence.

Karn. HC 1259

- Back-wages, on reinstatement, are not automatic. Mad. HC 1250
- Gratuity can't be forfeited merely for not handing over library books.

  Guj. HC 1256
- Mere common telephone and Accountant will not justify the clubbing of establishments for coverage under Provident Fund Act.

  All. HC 1243
- Permission for dismissal of a 'protected workman', during pendency of an industrial dispute, is must.

  Del. HC 1274
- EPF contributions for unidentified employees not payable.

Pat. HC 1254

- Mere withdrawal of provident fund will not justify validity of involuntary resignation.
- Training period to be counted for calculation of gratuity.

Cal. HC 1264

- Compensation justified on death due to injuries arising out of and during the employment.

  Mad. HC 1270

  Mad. HC 1270
- Dismissal for unauthorized absence without enquiry to be set aside.

  Mad. HC 1268
- Imposition of punishment, without enquiry, to be set aside.

Mad. HC 1268

- Holding enquiry becomes imperative when charges are rebutted by delinquent.

  Mad. HC 1268
- Reinstated worker must be provided his job.
- Dismissal of a protected workman, without permission, is to be set aside.

  Del. HC 1274
- Wages payable if employer declines to provide work to the worker.

  P&HHC 1262
- Regularization is justified on fulfilling prescribed conditions.

P&HHC 1262

Interest is not appropriate for delayed EPF contribution when code was not allotted.

Guj. HC 1273

- Denial of suspension allowance for not marking attendance improper when entry was prohibited.

  Jhar. HC 1266
- An employee can't be absconder merely because for registration of a criminal case.

  Jhar. HC 1266
- Forfeiture of gratuity justified only to the extent of loss caused to the employer.

  Del. HC 1237
- Allowances which were to be reimbursed while on duty will not be available after cancellation of suspension.

  Bom. HC 1241
- Resignation under coercion, as promptly reported by employee, will not be construed as voluntary.
- Right to appeal cannot be curtailed by attachment proceedings by EPF Authority.

  Mad. HC 1251
- Determining the amounts due from employer would become effective only on expiry of 60 days under EPF Act. Mad. HC 1251
- Reinstatement appropriate on non-compliance of 33(2)(b) or 33(3) of ID Act.
- A member of ESI can seek reimbursement of his medical bills through Insurance Court.

  Del. HC 1279
- Back-wages not payable to a worker not able to work due to illness.

   Mad. HC 1250
- Allowing claim for overtime to an employee, when supported with reasons, not to be interfered.

  Mad. HC 1223
- Reinstatement alongwith back-wages appropriate when removal was based upon conviction Mad. HC 1248
- Recovery of Provident Fund contributions made by unidentifiable persons is to be refunded.

  Pat. HC 1254
- Mere letters to ESI will not provide extension from three-year limitation period.

  Del. HC 1279
- Dominant test to club three different establishments for coverage under the EPF Act is the financial integrality.

All. HC 1243

- Common maintenance of accounts will not mean that the establishment is not independent for ESI Act.

   Bom. HC 1238
- Regional Provident Fund Commissioner is not empowered to reduce damages for late deposit of contributions. Bom. HC 1239
- Section 33A of ID Act protects the interest of the workmen.

Del. HC 1274

 Limitation Act not permits extension when remedy pursued on wrong forum.

Del. HC 1279

COMPLETE INDEX 2013

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VOL. XLIV

**DECEMBER 2013** 

No 12

# MPLIANCE



#### STATUTE (central)

COMPLIANCE

LAST DATE

Employees' Provident Funds & Misc. Provisions Act, 1952

Remittance of contributions

15th

Employees' State Insurance Act. 1948

Deposit of ESI contribution

21st

Payment of Bonus Act, 1965 & Rules

Annual return, within 30 days after the expiry of 8 months from the close of the accounting year

30th

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# Journal Section

### HNFAIR JS-315 (7)

ought not to be taken lightly

DIGEST OF

JS-329 (21)

Instalments allowed to a loss making company Show cause notice for non-compliance of tribunals' order Order without ascertaining the applicability of the act - to be re-

Minimum wages can be split in allowances for contributions Employer not obliged to cover excluded emmployees Damages for delayed deposit by sick establishment - to be quashed RPFC restrained on take coercive steps after allowing instalments

### Factories Act Related Problems & their Solutions

JS-322 (14)

**Employees' State Insurance Related** Problems & their Solutions



Related



Problems & their

JS-319 (11)

Transferring an office bearer of a union - permissibility Grievance Redressal Committee - Necessity of Acceptance of resignation - whether obligatory Termination of a probationer prior to prescribed period - not illegal

Area Manager - not a workman Obtaining jobs on misrepresentation - termination of

### ಹ್ಣ NOTIFICATION\$ JS-333 AMENDMENTS, & DEVEL OPMENTS



Retrenchment on computerisation without notice of change - not

JS-318 (10)

(25)



Pro-forma suggested for-

Appointment letter for fixed-term employment

Warning when a marketing executive fails to achieve the target

Warning to a sales representative who has failed to submit daily

Warning to an employee for unauthorised use of password



Whenever there is any incident of labour unrest occurs, one voice is raised from all corners and that is about obsolete labour laws of the country. Employers' bodies always cry for labour law reforms. What do you think is the contribution of old labour laws in labour unrest and what should be the strategies to prevent such unpleasent

In this fast moving business world, it is difficult but also necessary for managers specially the HR persons to understand the direction in which wind in flowing. Workplace and practices are also changing fast. How do you see the future of workplace and it's crucial characterstics?

Can you point out few areas on which HR should focus now to increase its contribution to the business of organisation? It is normally recommended that managers or supervisors should always behave in an assertive way rather than passive or aggressive. Can you please indicate few examples of these behaviours at workplace?