

SYNDICATE BANK EMPLOYEES' UNION (REGD)

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LEGAL NEWS

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FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

JULY, 2013

APPRENTICE

Workman – Industrial Disputes Act (14 of 1947), Section 2(s) – Apprenticeship Act (52 of 1961), Sections 2(aa), 2(r) and 18(b) – Respondent engaged as apprentice – Impugned award of Labour Court reinstated Respondent in service without back wages – Whether apprentice is 'workmen' within ambit of Section 2(s) – Held, Apprenticeship Act is special Act, does not cover workmen and it precludes application of any other labour laws – Application of U.P. Industrial Disputes Act, 1947 and Industrial Disputes Act, 1947 automatically stands excluded – When both State and Central Acts are not applicable, Labour Court/Industrial Tribunal will not have any jurisdiction to entertain any dispute arising therefrom – Status of Respondent cannot be converted to that of 'workman' under Section 2(s) of Industrial Disputes Act in view of bar contained in Section 18 of Apprenticeship Act, 1961 – Impugned award of Labour Court suffers from incurable jurisdictional infirmity, cannot be sustained – Writ petition allowed. [*State of Haryana v. Satish Kumar*]

Grounds of Decision

An apprentice shall not be held to be 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 in view of the bar contained in Section 18 of the Apprentice Act, 1961.

(RAJIV NARAIN RAINA, J.)

2013-III-LLJ-281 (P&H)

GRATUITY

Pension and gratuity – Eligibility to – Overriding effect of Act – Payment of Gratuity Act (39 of 1972), Section 14 – After voluntary retirement of respondent-employee, petitioner-bank paid gratuity and provident fund – On request for pension, petitioner asked to refund gratuity as condition for payment of pensionary benefits – High Court held that respondent entitled to pension in addition to gratuity already paid to him – Impugned order challenged – Civil Appeal – Whether employees who already received benefit under Gratuity Act can claim pension without refunding amount of gratuity – Held, as per Section 14 of 1972 Act contains a non obstante clause – Even if respondent opted for pension, he can legitimately claim gratuity without being required to refund amount of pension already received by him – Appeal dismissed. [*Allahabad Bank v. A.C. Aggarwal*]

Grounds of Decision

Every eligible employee is, notwithstanding anything inconsistent contained in any other enactment or instrument or contract, entitled to gratuity as per Section 14 of the Payment of Gratuity Act, 1972. Even if an employee had opted for pension, he can legitimately claim gratuity, without being required to refund the amount of pension already received by him.

(G.S. SINGHVI, J.)

2013-III-LLJ-1 (SC)

REINSTATEMENT

Industrial Disputes Act (14 of 1947), Section 25-F – Erstwhile bank amalgamated with appellant Bank – Respondent terminated by erstwhile bank prior to amalgamation – Labour Tribunal passed award of reinstatement – impugned order of High Court confirmed order of reinstatement – Whether respondent-employee, terminated by erstwhile bank is entitled for reinstatement by amalgamated bank – Held, on termination, respondent raised industrial dispute against erstwhile bank – Even though erstwhile bank amalgamated with appellant Bank, nothing shown on behalf of respondent that appellant Bank was liable to

reinstate him – Respondent not entitled to be reinstated by appellant bank – Since respondent terminated without following procedures prescribed under Section 25-F, his termination is irregular and he is entitled for compensation – Directions issued. *[Indian Bank v. P.O., Industrial Tribunal]*

(M.JAICHANDREN, J.)
2013-III-LLJ-45 (Mad)

RETRENCHMENT

Industrial Disputes Act, 1947, Sections 2(oo), 25-F and 9 – Respondent workman remained in uninterrupted contractual employment for 3½ years – Respondent refused to sign proforma contract limiting tenure of his service – Service terminated without assigning any reason – Another person was engaged to do same job on contract basis – Whether Respondent is entitled for regularisation of services – Held, non-signing of contract of employment during course of prior employment, amounts to 'retrenchment' 'for any reason whatsoever' within meaning of Section 2(oo) – Compelling workman to sign pro forma contract deed limiting his tenure of service, amounted to unfair labour practice – Management failed to comply with mandatory provision of Section 25-F – Continuous employment subsisting, adversely altered without notice in violation of Section 9 – Findings recorded by Labour Court after appreciating evidence, not to be interfered with in exercise of writ jurisdiction – Writ petitions dismissed. *[Chandigarh Child & Women Development Corpn. Ltd. v. P.O.]*

(RAJIV NARAIN RAINA, J.)
2013-III-LLJ-(P&H)

TERMINAL BENEFITS

Indian Contract Act (9 of 1872), Section 72 – Order passed to recover amount from retired employee/petitioner, which was paid in excess by employer – Impugned order challenged on ground that petitioner already retired from service and no notice was served to petitioner for recovery of excess amount – Whether merely on mistake of employer, order of recovery can be subsequently made to retired employee – Held, employee should be given opportunity of hearing before passing order of recovery of excess amount – No notice given for recovery of excess amount – Principles of natural justice violated – Promotional scale given to petitioner by employer was voluntary – No fraud or misrepresentation on part of petitioner/employee in getting promotion – Amount cannot be recovered after his retirement on ground that same was wrongly given – Impugned order set aside – Directions issued – Writ petition allowed. *[Shiv Swaroop Trivedi v. State of U.P.]*

LABOUR LAW

Reinstatement – Whether warranted – Order of Labour Court challenged by Petitioner/Employer – Workmen appearing at time of admission of Petition but not contesting Petition at all – Workman not joining services of Petitioner in spite of Interim Order in his favour – Held, Respondent-Workman not interested in working with Petitioner and raised issue to grab regularisation in shadow of termination – Held, order of reinstatement not be granted as a matter of course – Employer directed to pay Rs.50,000 to Workmen.

D.C.M. Shriram Industries Ltd. v. Presiding Officer, Labour Court II
(Sunita Agarwal, J.) (All.)
2013 (3) LLN 72

Reinstatement in service after retrenchment – Calculation of period of service – Held, period of service of Employee, who has been retrenched from service and subsequently reinstated, to be calculated from date of his initial appointment – Said Employee also entitled to regularisation/promotion after calculating his service from initial date of appointment.

UCO Bank v. Narendra Kumar Sharma (DB)
(Ajay Rastogi & Jainendra Kumar Ranka, JJ.) (Raj.)
2013 (3) LLN 398

Contingent Right to serve beyond age of 55 years – Entitlement to Back Wages – Petitioners having vested right to serve as drivers till attaining age of 55 years – Right to serve till 60 years contingent upon them being medically fit – In such circumstances, when termination of Petitioner's service was found to be invalid, Petitioner held entitled to payment of Back Wages only till age of 55 years, as service till age of 55 years was their vested right and service till age of 60 years, was only a contingent right – Back Wages.

Jeet Singh v. Delhi Transport Corporation (DB)
(Pradeep Nandrajog, J.) (Del.)
2013 (3) LLN 198

Illegal Appointment – Termination of service – Petitioner, daughter of Chairman of Respondent Bank – No agenda in meeting of Board with regard to appointment of Petitioner – Issue taken up by Chairman himself and resolution passed – No sanctioned set up to fill up post given to Petitioner – Entire process consequence of

misuse of position by Chairman – As appointment of Petitioner illegal, termination of Petitioner from service, held, valid – *Termination*.

Jagrutiben Vrajlal Modi v. Chairman

(K.S. Jhaveri, J.) (Guj.)

2013 (3) LLN 209

AUGUST, 2013

EMPLOYER-EMPLOYEE RELATIONSHIP

Termination – Charge sheet issued and inquiry conducted after expiration of contract period – Whether termination order which was passed after expiry of employer-employee relationship is valid – Held, relationship of employer and employee came to end since contractual period came to end – If proceedings for inquiry was not initiated prior to expiry of relationship of employer and employee, initiation of disciplinary proceedings and further proceedings thereafter, without any authority of law – Order for termination / dismissal of Petitioner set aside – Appeal allowed. [*Mitul Vinodray Savani v. Chief Engineer and CVO*]

(JAYANT PATEL, J.)

2013-III-LLJ-480 (Guj)

EMPLOYMENT AND LABOUR LAW

Judicial review – Scope of – Constitution of India, 1950, Article 226 – References pertaining to termination of services of Appellants – Labour Court held Appellants to be 'workmen' – Whether High Court can interfere with finding of facts recorded by Labour Court – Held, unless shown that findings are not based on evidence and are perverse, High Court cannot interfere – Whether a person is workman or not, is jurisdictional issue – Various duties of Appellants highlighted by High Court, are based on admitted position – Single Judge rightly undertook exercise of application of law on basis of admitted position, in case where Labour Court failed – Appeals dismissed. [*Ashwani Kumar Kamboj v. Presiding Officer, Labour Court-II*]

(A. K. SIKRI, CJ)
2013-III-LLJ-436 (P&H)

GRATUITY

Payment of Gratuity Act, 1972 – Termination of services of Respondent held to be illegal by Labour Court – As company was closed, lump sum compensation in lieu of reinstatement awarded – Whether lumpsum compensation in lieu of reinstatement can be considered as in lieu of gratuity - Held, Respondent discharged duty for many years – Employee would be entitled to gratuity as per Act, for period during which he worked – Merely because lumpsum compensation in lieu of reinstatement is ordered, right to get gratuity as per Act would not get extinguished. [*R.M. Engineering Works v. Khushalbai Manilal Chavda*]

(JAYANT PATEL, J.)
2013-III-LLJ-443 (Guj)

PUNISHMENT

Proportionality of Punishment – Removal from service – Appellant, Tradesman with Atomic Power Project wrote letter to Newspaper narrating incident of water logging in the power plant - Respondent authorities after enquiry proceedings ordered removal of Appellant from service on ground of unauthorised communication with Press – Revision Application before 3rd Respondent, Writ Petition before Single Judge and Appeal before Division Bench dismissed – Whether punishment imposed upon Appellant disproportionate to the offence – Held, Appellant failed to maintain standard of confidentiality and discretion which was required to be maintained – Appellant without any justification assumed role of vigilante – Basic requirements of being accepted as 'whistle blower' is that primary motive for activity should be in furtherance of public good exposing illegal activities of a public organisation or authority – Apart from being an insider, Appellant did not fulfill criteria for being granted status of a 'whistle blower' – Conduct of Appellant does not fall within the high moral and ethical standard required of a bona fide 'whistle blower' – No grave injustice has been done to Appellant – Punishment imposed on Appellant not so disproportionate to the offence as to shock conscience of Court. [*Manoj H. Mishra v. Union of India*]

(SURINDER SINGH NIJJAR, J.)
2013-III-LLJ-289 (SC)

WORDS AND PHRASES

'Whistle blower' – Requirements of – Every informer cannot automatically be said to be a bona fide "whistle blower" – A "whistle blower" would be a person who possesses the qualities of a crusader – His honesty, integrity and motivation should leave little or no room for doubt – It is not enough that such person is from the same organisation and privy to some information, not available to the general public – The primary motivation for the action of a person to be called a "whistle blower" should be to cleanse an organisation – It should not be incidental or by-product for an action taken for some ulterior or selfish motive. [*Manoj H. Mishra v. Union of India*]

(SURINDER SINGH NIJJAR, J.)
2013-III-LLJ-289 (SC)

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Sections 2(oo) & 25-F – Retrenchment – Services of Watchman on probation terminated on account of alleged misconduct – Held, if termination was simpliciter, inquiry was not mandatory – When stigma of misconduct was basis for Order of Termination, order passed without giving any opportunity or hearing to Workman, illegal – Order of Termination passed in contravention to Principle of Natural Justice, punitive in nature – Workman, being retrenched from service, entitled to reinstatement with continuity in service with 25% Back Wages.

The President, Maha Sabha Gurukul Vidyapeeth v. Presiding Officer
(Rajiv Narain Raina, J.) (P &H)
2013 (3) LLN 786

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Lump sum Contribution – Whether includes Gratuity – When payment of lump sum Contribution in lieu of Reinstatement is towards Back Wages and Reinstatement, same cannot be considered in lieu of Gratuity – Amount of Gratuity payable for period in which Employee worked, cannot be extinguished on basis of lump sum Contribution paid to Employee in lieu of Reinstatement.

R.M. Engineering Works v. Khushalbai Manilal Chavda (DB)
(Jayant Patel, J.) (Guj.)
2013 (3) LLN 640

SEPTEMBER, 2013

CONTRACT LABOUR

Reference order – Industrial Disputes Act, 1947, Section 2(s) – Engagement of contract labour for work of permanent nature alleged to be breach of settlement between Petitioner and Respondent Union – Union demanded benefit of permanency from date when employees started working for company – In pursuance of charter of demand, order of reference made – Whether impugned reference order vitiated by non-application of mind on part of appropriate Government – Held, impugned reference order records *prima-facie* satisfaction of existence of dispute fit to be referred for adjudication to industrial Tribunal – Appropriate Government exercises administrative function and not adjudicatory function in making reference under Act – Issue as to existence of employee-employer relationship between parties involves disputed questions of facts and consequent adjudication - Industrial Tribunal having pleadings of both parties before it, is in best position to adjudicate upon issues – Sufficient material available on record to satisfy appropriate Government of existence of industrial dispute between Petitioner and 3rd Respondent – Union has demanded benefit of permanency from date such employees started working for company and not mere abolition of contract labour from any prospective date – Impugned reference order cannot be faulted – Order not vitiated by non-application of mind on part of appropriate Government – Petition dismissed. [*Voltas Limited v. State of Maharashtra*]

(M.S. SONAK, J.)
2013-III-LLJ-758 (Bom)

DISCIPLINARY PROCEEDINGS

Pendency of criminal proceedings – Appellant was in-charge of a liquor vend owned by Respondent – Alleged that Appellant was involved in illegal sale of liquor – Criminal proceedings as well as disciplinary proceedings initiated against Appellant – Appellant claims that disciplinary proceedings as well as FIR stem from same incident – Whether conduct of departmental inquiry would prejudice Appellant in the criminal proceedings initiated against him – Held, no bar against an employer in initiating disciplinary proceedings against an employee for misconduct even if same is a subject matter of criminal proceedings – **No particulars have been provided as to how appellant would be prejudiced** – Evidence against Appellant revolves around excess stock and cash alleged to have been found during search conducted – Allegation on the basis of which both departmental proceedings as well as criminal proceedings have been initiated may be the same – Purpose of two proceedings as

well as the standards of proof required entirely different – **Criminal proceedings intended to take punitive measures in relation to offences committed by a person – Disciplinary proceedings intended to ensure that employees act honestly, maintain discipline and conform to rules of conduct specified by employer** – No interference warranted in conduct of disciplinary proceedings by Respondent – Criminal proceedings are likely to take some time – Not apposite to delay domestic proceedings to await progress in criminal proceedings - Conduct of departmental inquiry would not prejudice Appellant in criminal proceedings – Appeal dismissed. [*Vishnu Pal Singh v. Delhi Tourism and Transportation Development*]

Grounds of Decision

Purpose of disciplinary proceedings and criminal proceedings as well as standard of proof required for each proceeding are entirely different. It would not be apposite to delay domestic proceedings to await progress in criminal proceedings.

(VIBHU BAKHRU, J.)
2013-III-LLJ-582 (Del)

DISMISSAL FROM SERVICE

Without Permission – Industrial Disputes Act, 1947, Section 33(2)(b) – Workmen/Petitioners dismissed from service for not obeying order of transfer – Conciliation proceeding pending before Conciliation Officer on date of termination – No Permission obtained from Conciliation Officer under Act before passing orders of termination – Industrial dispute raised before Labour Court challenging termination order – Management, directed by Labour Court to reinstate workmen into service with continuity of service and back wages – Writ petition – Impugned order challenged by Management – Whether dismissal of workmen sustainable in law – Held, it is wrong to order dismissal without getting permission under Section 33(2)(b) of Act – Labour Court was right in holding that dismissal of workmen without getting permission not sustainable in law – No fault in award of Labour Court setting aside dismissal of workmen – Order of dismissal not sustainable – Award of Labour Court confirmed – Writ petition partly allowed. [*Sri Ramanarayan Mills Ltd. v. Presiding Officer, Labour Court*]

(S. NAGAMUTHU, J.)
2013-II-LLJ-577 (Mad)

INDUSTRIAL DISPUTE

Improper enquiry – Industrial Disputes Act, 1947, Fifth Schedule – Certified Standing Orders, Clause 27(vii)c – Petitioner/conductor in Respondent corporation issued charge memo – Petitioner made representation to furnish documents, it was not given – Enquiry Officer appointed – Petitioner sought adjournment as co-worker was unable to be present – No adjournment made, report submitted that charges proved against Petitioner – Writ petitions filed seeking Respondents to furnish documents, permit co-worker to assist in enquiry and treat as duty on days of participation of enquiry by co-worker – Challenged, second show cause notice issued against Petitioner – Whether Enquiry Officer erred in concluding enquiry hurriedly without giving opportunity to Petitioner to bring co-worker to participate in enquiry proceedings – Held, basic documents based on which charge memo was issued was not furnished – No opportunity given to bring co-worker when enquiry notice itself permitted him to bring co-worker – Second show cause notice liable to be quashed, since enquiry was conducted in undue haste manner – Under Fifth Schedule of 1947 Act action of employer can be characterised as unfair labour practice, if enquiry was conducted in unduly haste manner in violation of principles of natural justice – Directions issued – Writ petition allowed. [*G. Vinayagam v. General Manager, Metropolitan Transport Corporation*]

(D. HARIPARANTHAMAN, J.)
2013-III-LLJ-692 (Mad)

PENSION

Denial of Pension – Bank of Baroda (Employees) Pension Regulations, 1995, Regulation 22 Petitioner, a pension optee, imposed with penalty of removal from service by Respondent bank – Language of punishment such that Petitioner shall be entitled to all superannuation benefits – Respondent Bank denied Petitioner's claim of pension – Whether denial of pension by Respondent Bank legal – Held, two options available for award staff, either to be governed by contributory provident scheme or Pension – Defense of respondent that Bank is under no legal obligation to pay pension in lieu of employer's contribution in provident fund to those who have opted for pension, not tenable – Hostile discrimination created between similarly situated pension to get superannuation benefit which is held to be permissible, in punishment order itself – Denial by Respondent Bank to pay pension to petitioner, illegal and arbitrary – Petitioner held to be entitled to claim and receive pension from Respondent Bank – Petition allowed. [*Girish Shantilal Shukla v. Bank of Baroda*]

(PARESH UPADHYAY, J.)
2013-III-LLJ-698 (Guj)

Pensionary benefits – Resigned employee – Eligibility of – Banking Regulations 1995 – Petitioner, bank employee applied for voluntary retirement – Voluntary retirement denied as he has not completed 20 years of service – Petitioner resigned from his service – Pension benefits denied – Writ petition seeking relief of grant of pension – Whether resigned employee entitled to claim pension – Held, Resignation by an employee results in forfeiture of service as a result of which no pension can be granted – As petitioner resigned from service, he cannot claim and is not entitled to any pension – Decision in *M.R. Prabhakar and Others v. Canara Bank and Others followed* – Writ Petition dismissed. [*A.K. Jain v. Punjab National Bank*]

(VALMIKI J. MEHTA, J.)
2013-III-LLJ-620 (Del)

COMPULSORY RETIREMENT

Order of Compulsory Retirement – Considerations of Adverse entries of past - Development of law, traced – Service Law.

Rajasthan State Road Transport Corp. v. Babu Lal Jangir
(SC) (A.K. Sikri, J.)
2013 (4) LLN 1

CONSTITUTION OF INDIA

Article 226

Labour Law – Workman engaged as Contract Labourers – Proof of – Contention of Petitioner that Members of Union were engaged by Contractors – No Tender Notice or Contract, with regard to engagement, produced before Labour Court to establish their case – Documents sought to be filed before Writ Court to prove their claim, not permissible – Petitioner, held, not established that Workers in question were engaged by Contractors.

U.P. State Warehousing Corporation v. Presiding Officer
(All.) (Tarun Agarwala, J.)
2013 (4) LLN 69

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Section 2(k)

Industrial Dispute – Hiving off and transfer of Division of Appellant Company – Contention of Workman that they are entitled to serve Appellant-Company and that they were wrongly transferred – Appellant contending that on account of transfer,

Workman became Employees of transferee Company and relationship of Employer-Employee ceased to exist – Said denial on part of Appellant, held, constituting an Industrial Dispute within meaning of Section 2(k).

**Tata Iron & Steel Co. Ltd. v. State of Jharkhand
(SC) (A.K. Sikri, J.)
2013 (4) LLN 14**

Sections 2 (s), 2 (k) & 10(1)

Order of Reference made by Government – Whether valid – Allegation of Union that Contract Labours engaged by Petitioner-Company in respect of work of permanent nature to breach settlement between Company and Union – In such circumstances, Order of Reference made by Government requesting Tribunal to adjudicate whether Employer-Employee relationship existed between parties, held, not suffering from any jurisdictional infirmity – Government, while making a Reference, only exercises administrative powers and not adjudicatory function – Mere fact that Tribunal may not be able to grant some of reliefs would not warrant interference with Order of Reference – Instant Petitions challenging Order of Reference, dismissed.

**Voltas Limited v. State of Maharashtra (DB)
(Bom.) M.S.Sonak, J.)
2013 (4) LLN 121**

Section 10

Reference made to Tribunal – Validity of – Contractor engaged by Petitioner-School for escaping legal liabilities under Labour Laws and not for its convenience – In such circumstances, Reference made by appropriate Government under Section 10, justified.

**Delhi Public School v. State of Gujarat
(Guj.) (Paresh Upadhyay, J.)
2013 (4) LLN 393**

Section 25-G

Retrenchment – Workman need not prove continuous service for claiming benefit under provision – Order of Tribunal reinstating Workman, who had been retrenched but had not worked for 240 days in preceding year, justified and not interfered with – Writ Petition dismissed.

State of Himachal Pradesh and another v. Hardyal Singh

(HP) (Rajiv Sharma, J.)
2013 (4) LLN 256

MISCONDUCT

Delay in issuance of Charge-sheet – Consequence of – Inordinate delay of seven years in issuing Charge-sheet to Employee for alleged misconduct – Even if challenge to validity of relevant statutory provision is pending in Courts of law, Employer not estopped from proceeding against Employee – Reinstatement of Employee ordered by Single Judge, not interfered with – Writ Appeal dismissed – Labour Law.

Management of Delhi Transport Corporation V. Balbir Singh (DB)
(Del.) (Vibhu Bakhru, J.)
2013 (4) LLN 213

PAYMENT OF GRATUITY ACT, 1972 (39 of 1972)

Daily Wagers – Entitlement to Gratuity – Petitioners, who worked in Respondent-Corporation for 15 years, held, entitled to Gratuity – Gratuity cannot be denied to Petitioners on ground that they were daily wagers.

Ram Krishan and another v. Managing Director
(HP) (Rajiv Sharma, J.)
2013 (4) LLN 248

PENSION

Pendency of Departmental / Criminal proceedings – Pension or Gratuity, whether can be withheld – Pension and Gratuity not bounties but hard earned benefits for Employees – Both are in nature of 'property' – In such circumstances, Employee cannot be deprived of Pension or Gratuity without authority of law – Withholding of Pension or Gratuity on pretext of Administrative Instruction in absence of any Statutory mandate, erroneous – Order of State withholding Pension of Respondent on ground of Executive Instructions / Circulars having no Statutory character, erroneous and rightly set aside – Appeal filed by State, dismissed – Constitution of India, Article 330-A – Service Law.

State of Jharkhand v. Jitendra Kumar Srivastava
(SC) (A.K.Sikri, J.)
2013 (4) CTC 56