Labour Laws On Your Mail

A record of thoughts from Veenavee Prakaashana, Bangalore
January 2008

NO PF DEDUCTION ON LEAVE ENCASHMENT

The Madras High Court has come out with its judgment where in it is stated that encashment of leave will not attract EPF contributions since the definition of basic wages given under the Act did not intend to include such type of payments.

While giving its judgment the High Court respectfully disagreed with the decision of Bombay High Court in the case of Hindustan Lever Employees Union Vs Regional Provident Fund Commissioner and another [1995 (2) LLJ 279; 1995 LLR 416] and the decision of Karnataka High Court in the case of Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Mangalore Vs Kasturba Hospital and others and precluded the RPFO, Tamilnadu from seeking for contribution in respect of leave encashment paid or payable to the workmen.

Before delivering its judgment the Court also examined the case laws settled by the Supreme Court of India in the cases All India Reporter Karmachari Sangh and others Vs All India Reporter Limited and others [1988 (Supp) SCC, Bridge & Roof Company (India) Limited and others Vs Union of India and others, 1962 (2) LLJ 490] and TI Cycles of India, Ambattur Vs M K Gurumani and others (2001) 7 SCC 2004.

The Court also said that if the decisions of the Supreme Court in Bridge & Roof Company (India) Limited and others Vs Union of India and others and TI Cycles of India, Ambattur Vs M K Gurumani and others are read together there will be no difficulty in arriving at the conclusion that the basic wage never intended to include leave encashment. The term "basic wage" which includes all emoluments which are earned by an employee while on duty or on leave or on holidays with wages, in accordance with the terms of contract of employment, can only mean the weekly holidays, national and festival holidays etc.

It was Court's opinion was that by allowing the deduction on the encashment of annual leave, in no way, the employees are benefited and at the time of retirement or death, a lump sum amount in his hands or in the hands of legal heirs will give a greater relief because at that time only, he receives the entire PF contributions standing to his credit also.

- Madras High Court in the case of Thiru Arooran Sugars Limited and five others Vs The Asst Provident Fund Commissioner (ENF), EPFO, Trichirapalli and another

STOPPAGE OF INCREMENTS IS A MINOR PUNISHMENT

Overruling the decision of the Division Bench of High of Punjab and Haryana, the Supreme Court has said that punishment of stoppage of two increments with cumulative effect is a minor punishment.

- Supreme Court of India in the case of State of Punjab Vs Nirmal Singh.

COMPASSIONATE APPOINTMENT CANNOT BE CLAIMED AFTER A LONG LAPSE OF TIME

In its recent judgment The Delhi High Court said that the position of law is clear that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and to not to provide employment. To be considered for such employment is not a vested right that can be exercised at any time in future. The object of compassionate employment cannot be claimed and offered after a long lapse of time and after the crisis is over.

It is apparent that when an application is belated or delayed, the penury on account of the sudden demise of an employee dissipates and there would be no warrant or justification for violating the equalities guaranteed under Articles 14 and 16 of the Constitution.

- Delhi High Court in the case of Virender Singh and M.C.D.

EMPLOYER CAN PASS ORDER OF DISMISSAL FROM DATE OF SUSPENSION

In a case it is held that there is no necessity to prescribe any particular period of suspension as it is only a suspension pending enquiry and no challenge can be made if period of suspension is not prescribed.

When there is an order of suspension pending enquiry, if an order of dismissal is passed, it is open to the employer to pass an order of dismissal either from the date of suspension so as to deny wages for the interregnum period or dismiss him prospectively.

- Madras High Court in the case of Sarel Primary Agricultural Co-operative Bank Limited Vs Deputy Commissioner of Labour, Tirunelveli and another.

ESI CONTRIBUTIONS NOT PAYABLE ON OUTSIDE JOBS –IMPORTANT CASE

Earlier during our April-2007 issue we have brought to your notice a copy of the circular issued by the ESI corporation that enabled it to demand ESI contributions from Principle Employer on the job work given to the outside establishments.

In the case Employees' State Insurance Corporation Vs JMD Fashions, settled by the High Court of Karnataka, it has been held that the outside establishments are not immediate employers under Section 2 (13) of the Act. On the basis of this the ESICs demand for contributions on the conversion charges and job work entrusted to the outside establishments for stitching was set aside.

The Supreme Court of India dismissed a petition of ESIC challenging the decision of Karnataka High Court.

Similarly, in the case of National India Rubber Works Limited Vs Employees' State Insurance Corporation, the Madhya Pradesh High Court has held that since the company is not supervising the work of the employees of the contractors, the company would not come under the ambit and sweep of "immediate employer" as envisaged under Section 2(13) of the ESI Act nor those employees of the contractors would come under the ambit and sweep of "employee" as defined under Section 2(9) of the ESI Act. [Labour Laws On Your Mail- July-2007]

Later, on receipt of large number of representations from the employers and their associations the ESI Corporation has decided to refer the questions regarding the claims for ESI contributions on outsourced jobs to a group of Senior Officers to make a thorough study of all aspects concerned and submit its report.

The ESI Corporation has also decided to withhold further actions in this regard till 30 September 2007. [Labour Laws On Your Mail- October -2007]

Recently the ESIC has come out with another circular wherein it has referred to various case laws settled by the different High Courts and the Supreme Court of India. The outcome is that Principle employer is not liable to pay ESI contributions on the job work entrusted to outside establishments.

We have brought this to your immediate attention vide our second Special issue of November-2007 dated 14 November 2007.

Now, the full Bench of Madras High Court has settled a case on reference by a Single Judge as he felt that there is an apparent conflict between the two Division Benches of the Madras High Court and the full Bench has now come out with its views on the issue whether the right of the principle employer to reject or accept work on completion, on scrutinizing compliance with job requirements, as accomplished by a contractor, the immediate employer, through his employees, is itself an effective and meaningful `***supervision***' as envisaged under Section 2 (9) of the Employees' State Insurance Act, 1948.

The Full Bench has said that the right of the principle employer to reject or accept the work done by the contractor through his employees is by itself cannot be construed as effective and meaningful `supervision' as envisaged under Section 2 (9) of the Act.

- Full Bench of Madras High Court in the case of ESI Corporation Vs Bethall Engineering Company.

STORES IN-CHARGE IS A WORKMAN UNDER ID ACT

In the case on hand an employee working as stores in-charge has been held as a workman under ID Act.

While presenting their argument the employee said that he was doing the work of clerical nature only and therefore falls within the definition of workman. On the other hand the management argued that the employee was engaged as Assistant Manager and he was employed in managerial capacity and was doing the job of a manager and therefore cannot be treated to be a workman.

On hearing the matter the Court held that basically the employee was a workman though he may have given the high sounding designation of Assistant Manager. It is clear that his main duties as Stores In-Charge were to purchase, sell and handover spare parts and maintain the record thereof. In such capacity he maintained bin cards and cardex register too. It is also apparent that in the absence of Branch Manager the employee at times was doing supervisory function. However, merely because he may have discharged supervisory and managerial functions off and on, this cannot detract from the basic fact that he was working as Stores In-Charge and the Stores In-Charge has to be treated as workman and cannot be treated as a person working in managerial or supervisory capacity.

- Division Bench of Himachal Pradesh in the case of M/s Sikand and Company Vs State of Himachal Pradesh and others.

A PERSON DOING JOB WORK- IS HE A WORKMAN?

" It is true that a person engaged on job work could be termed a workman but such person could only be termed a workman provided he had worked regularly in the establishment and was paid for the work turned out during the regular employment on the basis of the work done. A piece- rated worker can be called a workman within the definition of the word `workman' as defined under the Act, but he must be a regular worker and not a worker who comes and goes at his sweet will. Further, the worker must be working under a contract of service and that there is an obligation to work either for a fixed period or between fixed hours". Person given liberty to come and go at their pleasure and are not working in accordance with any order of the management do not come under the category of a regular employment and hence not a workman-The Court said.

- Allahabad High Court in the case of Union of India and another Vs State of Uttar Pradesh and others.

ESIC OFFERS NEW BENEFITS TO EMPLOYERS AND EMPLOYEES

The 141st meeting of the Employees State Insurance (ESI) Corporation has approved a fresh amnesty scheme for withdrawal of cases against the defaulting employers and employees apart from approving the Annual Report of the organization. Shri Oscar Fernandes, the Union Minister of Labour & Employment and Chairman, ESIC, chaired the meeting on 18 December 2007.

(i) The approved amnesty scheme will come in force from 1st January 2008 and will remain effective till the year-end i.e. 31st December 2008. The Amnesty scheme envisages that the prosecution cases filed in the 1st Class Judicial Magistrate Courts for non-payment of contribution would be considered for withdrawal subject to payment of contribution due and statutory interest. The quantum of relief in damages leviable/levied to the extent of 75 per cent as specified under Regulation 31-C would be provided to the employers and the damages leviable/levied to the extent of 25 per cent only would be claimed from the employers. The employers will have to give an undertaking to the effect that they would be regular in compliance in future and there would not be default on their part.

(ii) In order to minimize the need of inspections, introduction of a self-certification system has been approved by the ESI meeting. Presently, the employers are required to submit a six monthly return in respect of employees engaged by them and the contribution paid in respect of such employees. The ESI meeting has now approved that the employers employing up to 40 employees, who are regular in compliance, will not be required to get the return certified by a Chartered Accountant and shall only submit a Self-Certificate.

(iii) The ESI Corporation also enhanced the Permanent Disablement Benefit and Dependents' Benefit Rates to compensate the erosion in its real value to inflation. The meeting also approved the review of the 'Rajiv Gandhi Shramik Kalyan Yojana' and resolved that the condition of 50 per cent disability under non-employment injury cases be reduced to 40 per cent disability so that more Insured Persons (IPs) could be covered under the scheme.

(iv) It also approved the creation of a Sub-Regional Office of International Social Security Association (ISSA) at ESIC Headquarters in New Delhi. The ESI Corporation is an affiliate Member of the ISSA that comprises of more than 365 Institutions and bodies in over 155 countries and promotes corporation at international level in the area of social security.

(v) The Corporation has spent a sizeable amount of Rs.1,054.52 crores on the medical and cash benefits of insured persons and their family members. The achievement of the Corporation for the year 2006-07 also includes - enhancement in the wage ceiling of coverage of employees under the ESI Act from Rs.7500/- to Rs.10,000/- p.m. w.e.f. 1.10.2006; inclusion of 10 more slabs of daily standard benefits rates from Rs.150/- to Rs.195/-; the increase in revenue collection which was Rs.2,453.48 crores; and enhancement in the ceiling of reimbursing medical care from Rs.900/- to Rs.1,000/- per IP family unit per annum. Similarly, rate of funeral expenses of deceased insured person has also been increased from Rs.2,500/- to Rs.3,000/-.

New Judges for Karnataka High Court SIC Offers

In exercise of the powers conferred by clause (1) of Article 217 of the Constitution of India, the President is pleased to appoint (i) Shri Justice Narayanappa Ananda and (ii) Shri Justice Jawad Rahim, Additional Judges of the Karnataka High Court, to be Judges of the Karnataka High Court, in that order of seniority, with effect from the dates they assume charge of their respective offices.

We wish all of our readers a wonderful New Year. May the year 2008 be in every aspect a better year than 2007.

RETURNS TO BE FILED DURING JANUARY AND FEBRUARY 2008

Return/Form	Under	To be Filed on or before	To be sent to
Quarterly Return ending December [ER-1]	The Apprenticeship Act, 1961	15-01-2008	The concerned department of Employment & Training
Labour Welfare Fund Contributions	Labour Welfare Fund Act of concerned State	15-01-2008	The concerned Labour Welfare Fund Commissioner
Annual Return	The Factories Act, 1948	15-01-2008	The concerned inspectorate of Factories
Half yearly Return [Form XXIV]	The Contract Labour (R & A) Act, 1970.	30-01-2008	The concerned ALC
Annual Return [Form III]	The Minimum Wages Act, 1948	15-02-2008	The concerned Local Office Manager
Annual Return [Form XXI]	The Contract Labour (R & A) Act, 1970.	15-02-2008	The concerned ALC

ALL-INDIA AVERAGE CONSUMER PRICE INDEX NUMBERS FOR INDUSTRIAL WORKERS (BASE 2001=100)

General Index

Year	Jan-07	Feb-07	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
2007	127	128	127	128	129	130	132	133	133	134	134	

Important Cities

Place	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07	Jul-07	Aug-07	Sept-07	Oct-07	Nov-07	Dec-07
Bangalore	121	121	132	133	134	135	138	138	137	138	138	
Chennai	118	116	121	122	123	125	126	126	125	126	126	
Delhi	116	117	125	128	128	128	130	131	132	131	131	
Hyderabad	113	113	120	121	122	123	124	124	124	124	124	
Kolkata	117	115	128	130	130	130	133	135	136	138	138	
Mumbai	122	121	130	132	132	134	136	135	136	138	138	
Pune	120	120	132	133	135	136	138	137	138	138	138	

LINKING FACTOR WITH PREVIOUS SERIES BASE 1982=100

Important Cities

Place	Linking Factor
All India	4.63
Bangalore	4.51
Chennai	4.95
Delhi	5.60
Hyderabad	4.79
Kolkata	5.12
Mumbai	5.18
Pune	4.96

Nataraj