

Important Labour Judgments

2009 at a glance...

Supreme Court said...



Not Joining at transferred place is a misconduct. Discharge on this account will be illegal, without following proper disciplinary proceedings procedure.

Novartis India Ltd. vs. State of West Bengal and Others. 2009 LLR 113

Disciplinary Authority has to give hearing to delinquent employee before passing order of dismissal.

State Bank of India & Ors. v. Ranjit Kumar Chakraborty & Anr. 2009 I CLR 66

Reserve Bank of India and/or its college is not covered under Contract Labour Act.

Reserve Bank of India & Anr. vs. State rep. by M.R. Bhavsar, Bombay. 2009 LLR 121

Reinstatement with back-wages is no longer a normal rule.

U.P. State Electricity Board vs. Laxmi Kant Gupta. 2009 LLR 1

No. O.T. for Saturday and Sunday when governed by PEB Regulations.

Sat Pal Puri vs. Punjab State Electricity Board and Ors. 2009 LLR 22

No back wages to workman terminated for unauthorised absence.

Depot Manager, Andhra Pradesh State Road Transport Corporation & Anr. vs. V. Surender. 2009 LLR 225

When employees worked under the control of the company, relationship of master-servant gets established.

Kanpur Electricity Supply Co. Ltd. vs. Shamim Mirza. 2009 LLR 226

It is for the workman to prove that he was not gainfully employed.

M.D., Balasaheb Desai Sahakari S.K. Ltd. vs. Kashinath Ganapati Kambale. 2009 LLR 230

No back wages to bus conductor who got another job after dismissal.

Depot Manager, A.P.S.R.T.C. vs. P. Jayaram Reddy. 2009 LLR 239

In the absence of proper enquiry without statement of witnesses, dismissal would be illegal and reinstatement would be proper.

Roop Singh Negi vs. Punjab National Bank & Ors. 2009 LLR 252

Senior can't be paid less than junior employee.

Er. Gurcharan Singh Grewal & Anr. vs. Punjab State Electricity Board & Ors. 2009 LLR 318

The doctrine of acquiescence and waiver would apply in Industrial Disputes also.

Laxmi Rattan Cotton Mills, Ltd. vs. State of Uttar Pradesh & Ors. 2009 LLR 326

Insurance company is liable to pay interest if not restricted by policy.

Kamla Chaturvedi vs. National Insurance Co. and Others. 2009 LLR 329

Date of birth entered by mistake due to two employees of same name and documents got mixed up, resulting into earlier retirement, is liable to be corrected.

IMPORTANT LABOUR JUDGMENTS 2009

Mohd. Yunus Khan vs. U.P. Power Corporation Limited & Others. 2009 LLR 330

When company was closed for years and declared sick, 50% of back wages will be proper in case of illegal termination.

M/s. P.V.K. Distillery Ltd. vs. Mahendra Ram. 2009 LLR 337
Last drawn wages as mentioned in sec. 17(b) of I.D. Act can neither be determined under sec. 33(c)(2) nor reduced by H.C.

Kaivalyadham Employees Association vs. Kaivalyadham S.M.Y.M. Samity. 2009 LLR 340

Employee neither submitting reply to charge sheet nor participating in the enquiry after notices, can't complain of violation of principles of natural justice.

Chairman, Ganga Yamuna Gramin Bank & Ors. vs. Devi Sahai. 2009 LLR 344

In the absence of proof of gainful employment 25% back wages will be proper.

Executive Engineer, Water Services Div., Haryana v. Kartar Singh. 2009 I CLR 1036, 2009 LLR 512

Direction of labour commissioner of equal wages to contractor workers can not be sustained without proper supporting reasons.

Panki Thermal Station & Anr. vs. Vidyut Mazdoor Sangthan & Ors. 2009 LLR 347

No compensation, when employee died by drowning while sitting on steps of temple.

Malikarjuna G. Hiremath vs. The Branch Manager, The Oriental Insurance Co. Ltd. & Anr. 2009 LLR 350

For promotion, service of temporary, ad-hoc or work charge employee can't be counted.

Punjab State Electricity Board & Ors. vs. Jagjiwan Ram & Ors. 2009 LLR 440

Industrial Tribunal should be slow in interfering with the enquiry report and punishment awarded by management.

West Bokaro Colliery (TISCO Ltd.) vs. Ram Pravesh Singh. 2009 LLR 449

Even if compensation is paid in full, interim relief will continue to be paid where termination is challenged. If judgment goes against workman, amount of interim relief will be adjusted against retrial benefits.

Hongkong & Shanghai Banking Corp. Ltd. vs. Government of India & Anr. 2009 LLR 467

Reinstatement would be illegal when awarded without deciding the basic facts of worker having completed 240 days and whether agriculture department is an industry or not.

State of Orissa & Anr. vs. Bilash Chandra Ojha. 2009 LLR 469

An employee appointed by samiti working in a school will be employee of the samiti.

Samarth Shiksha Samiti & Anr. vs. Bir Bahadur Singh Rathour & Ors. 2009 LLR 512

In the absence of acceptance of VRS option by employer, made by employee, no right to claim VRS benefits exists. Acceptance by management is condition precedent.

National Textile Corporation (M.P.) Ltd. vs. M.R. Jadhav. 2009 LLR 545

No reinstatement when appointment made in gross violation of constitutional provisions.

State of Bihar vs. Upendra Narayan Singh & Ors. 2009 LLR 551

Dismissal improper, if absence is not habitual. Modified to stoppage of 2 increments.

Jagdish Singh vs. Punjab Engineering College and others. 2009 II CLR 514 & 2009 (121) FLR 984

Confession before Police Officer during investigation is not a legally admissible evidence hence E.O. cannot rely upon such evidence in enquiry.

Roop Singh Negi v. Punjab National Bank. 2009 (1) LLN 806

Subsequent grant of extraordinary leave would not condone unauthorised absence.

State of Punjab vs. Dr. P.L. Singla. 2009 (121) FLR 770

When reinstatement awarded without attendance benefit and back wages, no national increments of the back period will be given.

V.V.G. Reddy vs. A.P.S.R.T.C. Nizamabad Region & Anr. 2009 LLR 561

While granting interim relief, material produced by the employer proving worker's gainful employment, should also be considered by the court.

Rajasthan Gramin Bank vs. Bishan Lal Bairwa. 2009 LLR 563

When workman reached the age of superannuation pending dispute, 1/3rd of the back wages will be appropriate.

M/s Tirupati Jute Industries (P) Ltd. & Anr. vs. State of West Bengal & Ors. 2009 LLR 568

Govt. can refuse to refer the dispute only where the demand is frivolous or perverse.

Sarva Shramik Sangh vs. Indian Oil Corporation Ltd. & Ors. 2009 LLR 575

When sending notice by management to call upon absentee employee to report for duty is a service

IMPORTANT LABOUR JUDGMENTS 2009

condition (as per shastri award applicable to banks), failing to do so would attract reinstatement of such employee terminated for remaining absent from duty.

Regional Manager, Central Bank of India vs. Vijay Krishna Neema and Others. 2009 LLR 654

Large number of employees should not be dismissed only for the purpose of cutting costs.

M.P. State Co-Op. Dairy Fedn. Ltd. and another vs. Rajnesh Kumar Jamindar and others. 2009 (121) FLR 917

Setting aside dismissal of bus conductor found guilty of not issuing tickets is wrong.

Rajasthan S.R.T. Corporation vs. Kamruddin. 2009 LLR 689

Termination of trainees not illegal when appointed on fixed salary for particular period no matter they continued to work beyond period by interim order.

M.D. Hindustan Photo Films and Anr. vs. H.B. Vinobha and Ors. 2009 LLR 787

Dismissal justified for unauthorised absence for long period.

M.P. State Electricity Board and Anr. vs. S.K. Yadav. 2009 LLR 814

No protection under the I.D. Act is available to Badli workman.

Bangalore Metropolitan Transport Corporation vs. T.V. Anandappa. CLR II 2009 P. 299, 2009 LLR 659

Workman compensation commissioner can grant higher compensation than claimed by the workman under W.C. Act.

Oriental Insurance Co. Ltd. vs. Mohd. Nasir & Anr. 2009 LLR 817

Bangalore Turf Club is not 'shop' under ESI prima facie. Requires consideration by the larger bench.

Bangalore Turf Club Ltd. vs. ESI Corporation. 2009 LLR 826

Daily wager can't get any relief claiming after 14 years.

State of Karnataka & Anr. vs. Ravi Kumar. 2009 LLR 827

Compensation in lieu of reinstatement of daily wager proper.

Narendra Kumar vs. The Regional Manager, Punjab National Bank & Ors. 2009 LLR 871

No reinstatement of workman failing to prove 240 days working.

Krishna Bhagya Jala Nigam Ltd. vs. Mohammed Rafi. 2009 LLR 872

Termination of workman working intermittently on 89 days basis would be retrenchment.

The Chief Soil Conservator Punjab & Ors. vs. Gurmail Singh. 2009 LLR 875

Registrar of Trade Union & not the court can grant union

registration.

Indo Court Choongnam, Employees Union & Anr. vs. Registrar (Bombay Industrial Relations Act) & Anr. 2009 LLR 877

When contract labour system is sham, nominal or mere camouflage, contract labour will be automatically absorbed but mere supervision of principal employer on contract labour can't be treated as direct employment.

International Airport Authority of India vs. International Air Cargo Workers' Union & Anr. 2009 LLR 923

Back wages on reinstatement is no more a thumb rule.

Babu Lal vs. Haryana State Agricultural Marketing Board. 2009 LLR 936

Probationer/daily wager, when dismissed for misconduct, need not to be reinstated.

Divisional Manager, Rajasthan State Road Transport Corporation vs. Kamruddin. 2009 LLR 945

When workman says, he was refused to resume work and employer says workman did not report, compensation in lieu of reinstatement would be proper.

Hercules Mechanical Works & Ors. vs. Wire Ropes Engineering Workers Union. 2009 LLR 949

Mere presence of refrigerator and grinder will not make hotel coverable under ESI being having manufacturing process unless use of power is direct and proximate.

M/s Hotel New Nalanda vs. Regional Director, E.S.I. Corporation. 2009 LLR 950

Termination of services for repeatedly remaining absent from duty. Charges duly proved in disciplinary enquiry. Though enquiry report not supplied to security guard, but he has not complained that what prejudice caused to him by it. Hence High Court should not have interfered with order of punishment passed by disciplinary authority on such technicalities. More so the respondent deserted the line as if he had right to desert the line. It was a case of gross violation of discipline.

Union of India and others vs. Bishamber Das Dogra. 2009 (122) FLR 578

No automatic reinstatement if termination is in violation of Sec. 25(F) of I.D. Act, more particularly when workman is daily wager. Compensation will be justified.

Dismissal justified for habitual negligence and abusive language. Enquiry not vitiated when conducted by company lawyer.

Biecco Lawrie Ltd. & Anr. vs. State of West Bengal & Anr. 2009 LLR 1057.

When malafide not supported, transfer not to be interfered by court.

IMPORTANT LABOUR JUDGMENTS 2009

Airports Authority of India vs. Rajeev Ratan Pandey & Ors. 2009 LLR 1064

Petrol pump comes under the definition of “manufacturing process” being using power to fill petrol from tank to vehicle, hence covered under ESI Act.

M/s. Qazi Noorul H.H.H. Petrol Pump & Anr. vs. Dy. Director, E.S.I. Corporation. 2009 LLR 1066

Continuous absence, failed to join duty even after calls, we justify termination of a bank employee.

Regional Manager, Bank of Baroda vs. Anita Nandrajog. 2009 LLR 1135

It is for the labour court to spell sound reasons while interfering with the quantum of punishment awarded by the employer. Ordinarily courts should not interfere.

U.P. State Road Transport Corporation vs. Nanhe Lal Kushwaha. 2009 LLR 1149

When rules of promotion include the basis of “seniority cum merit”, promotion to a senior employee can’t be denied.

Haryana State Electronics Development Corporation Ltd. vs. Seema Sharma and Others. 2009 LLR 1162

Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr. 2009 LLR 966

Appellate authority should apply its mind and give cogent reasons, while affirming punishment.

Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney & Ors. 2009 LLR 970

When workman did not complete 240 days, Sec. 25(F) does not attract.

Haryana State Co-operative Supply Marketing Federation Ltd. vs. Sanjay. 2009 LLR 1014

Restaurant preparing tea, coffee, and sweets by using LPG employing 10 or more persons will be covered under ESI.

Bombay Anand Bhavan Restaurant vs. The Dy. Director, ESI Corporation and Anr. WITH M/s Cow & Cane and Anr. vs. The Regional Director, ESI Corporation. 2009 LLR 1169

Reinstatement without back-wages in place of dismissal proper for rash and negligent driving where no passenger was hurt.

Subhash vs. The Divisional Controller, Maharashtra State Road Transport Corporation & Anr. 2009 LLR 1245

Reinstatement with full back-wages to a daily wager will not be proper as there is a marked distinction between daily wager and permanent employee. Compensation will suffice.

Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr. 2009 LLR 1254

While determining ESI contributions, workers being beneficiaries must be heard.

Employees' State Insurance Corporation vs. Bhakra Beas Management Board and Anr. 2009 LLR 1262

In labour related disputes, workers / trade union must be heard by court.

Fertilizers and Chemicals Travancore Ltd. vs. Regional Director, ESIC and Ors. 2009 LLR 1264

Even if dismissal of a workman is illegal, compensation in place reinstatement would do justice.

Ashok Kumar Sharma vs Oberoi flight services. 2009 LLR 1281

In case of transfer of undertaking, liability to pay compensation to workman would be upon the transferor.

New Horizon Sugar Mills Ltd. vs Ariyur Sugar Mills staff welfare association. 2009 LLR 1320

Termination for unauthorised absence would not be valid without holding of domestic enquiry.

C.N. Malla vs State of J&K. 2009 LLR 1318

& High Courts said...

APPRENTICE

Apprentice/trainee is not workman under I.D. Act.

Vijay Kumar v. Presiding Judge, Labour Court & Anr. LLJ II 2009, P. 116

BACK WAGES

Unless workman proves his unemployment, basic wages on reinstatement can't be awarded in routine.

Md. Mohiuddin vs. State of West Bengal and Others. 2008 LLR 1263 (Calcutta H.C.)

No back wages to workman based on the principle of no work-no pay.

Management of Bharat Heavy Electricals Ltd., rep, by its General Manager, Tiruchirapalli vs. Presiding Officer, Labour Court, Tiruchirapalli & Anr. 2009 LLR 327 (Madras H.C.)

In order to claim back wages, there must be evidence

IMPORTANT LABOUR JUDGMENTS 2009

that the workman was not gainfully employed anywhere after termination of his service.

Nirdeshak Prasar, Chandra Shekhar Azad University of Agriculture and Technology, Kanpur v. Presiding Officer, Labour Court, Kanpur. FLR (120) 2009, P. 692 (Allahabad H.C.)

No Back Wages to habitual absentee even if directed to reinstate.

Ram Chandra Sitaram Kale (Deceased) & Anr. vs. Maharashtra State Road Transport Corporation. 2009 LLR 353 (Bombay H.C.)

Unless specifically directed no consequential benefits like leaves etc. will be part of Back Wages.

Maharashtra State Road Transport Corporation, Nagpur vs. Leeladhar & Anr. 2009 LLR 363 (Bombay H.C.)

When workman did not declare that he was employed any where, 50% back wages will be justified.

Bharat Kumar Motilal & Company vs. Balu Baburao Mhatre. 2009 LLR 445 (Bombay H.C.)

By being self employed the workman does not become gainfully employed.

M/s. U.P. State Road Transport Corporation, Kanpur and Another vs. Balram Singh and Others. 2009 LLR 504 (Allahabad H.C.)

For the purpose of granting back wages many factors like method of appointment period of service and delay in raising dispute need to be considered by court.

Management, Divisional Forest Officer, Social Forestry Division, Villupuram vs. K. Arokiadass and Another. 2009 LLR 497 (Madras H.C.)

It is for the employee to prove his unemployment to claim back wages on reinstatement.

Principal, Danund Taluka Arts and Commerce College, Danund And others vs. Macchindra Sahebrao Bhavar and Another. 2009 LLR 679 (Bombay H.C.)

Doing agricultural work in village will not amount to gainful employment.

Haryana Roadways vs. Ramesh Kumar. 2009 LLR 754 (Delhi H.C.)

When negotiations continued and workers requested for lifting of lock-out next day, 50% back wages for lock-out period will be appropriate.

Management of Assam Carbon Products Limited, Hyderabad vs. Industrial Tribunal-I, Hyderabad & Ors. 2009 LLR 941

BONUS

Bonus can be claimed before labour court or before prescribed Authority.

Shivanand Misra vs. M.P. Road Transport Corporation, Bhopal and Another. 2009 LLR 40 (M.P. H.C.)

CHARGESHEET

No second chargesheet on the same charges, when employee exonerated of the same after disciplinary action.

Dharam Chand Lamba vs. R.S.R.T.C. and Others. 2009 LLR 58 (Rajasthan H.C.)

CLOSURE

Court can not question motive of employer in closing down the establishment.

Leelabhair Sakharan Bhagwat and Ors. vs. Shobha Industries. 2009 LLR 141 (Bombay H.C.)

Termination on closure not to be interfered, when all dues paid.

Radha Nair (Smt.) vs. Presiding Officer, Labour Court, Ambala & Ors. 2009 LLR 181 (Punjab H.C.)

Closure can be effected for even a part of the under taking. Entire establishment need not be closed.

K. Mohan & Co. International, Nashik vs. Nashik Workers Union, Nashik and Another. 2009 LLR 441 (Bombay H.C.)

Employer can't be restrained from closing down the factory on or removing the raw material and machinery merely on apprehension.

Malco General Workers Union & Aluminium Thozhilalar Sangam vs. State of Tamil Nadu & The Madras Aluminium Co. 2009 LLR 416 (Madras H.C.)

CONTRACT LABOUR

In the absence of "Contract Labour" provision in standing orders, contract labour system will not be legal and proper.

Hindustan Petroleum Corporation Ltd., Mumbai & Ors. vs. Presiding Officer, Central Government Labour Court-cum-Industrial Tribunal, Chennai And G. Karmegam and Others vs. Hindustan Petroleum Corporation Ltd., Mumbai & Ors. 2009 LLR 75 (Madras H.C.)

No parity of wages to canteen Contract Labours.

Hindalco Pragati Sheel Mazdoor Sabha, Renukoot, Mirzapur vs. Industrial Tribunal-I, Allahabad and Ors. 2009 LLR 143 (Allahabad H.C.)

It is for principal employer to ensure that atleast minimum wages are paid to contractor workers by contractor, failing which recovery can be made from him besides penalty.

General Manager, Aligarh Dugdh Utpadak Sahkari Sangh

IMPORTANT LABOUR JUDGMENTS 2009

Ltd. (Parag Dairy) Sasni, Hathras vs. Prescribed Authority, Minimum Wages Act Dy. Labour Commissioner, Aligarh and Others. 2009 LLR 316 (Allahabad H.C.)

When contractor workers working for long under the control and supervision of principal employer and not changed even after changing of contractors, reference of dispute of their regularisation would be proper.

Indian Oil Corporation Ltd. vs. Union of India & Ors. 2009 LLR 356 (Delhi H.C.)

Contractor canteen workers in a factory where canteen is required statutorily, will be workers of the factory for the purpose of factories act only.

Badarpur Power Engineers & Workers Union and Ors. vs. The General Manager, Badarpur Thermal Power Station & Ors. 2009 LLR 584 (Delhi H.C.)

In case of non renewal of contract, contractors labour have no right to press for the demand of their regularisation by resorting to gherao or demonstration.

Indira Gandhi National Open University vs. M/s Spick & Span Facilities Management (P) Ltd. & Ors. 2009 LLR 627 (Delhi H.C.)

Absorption of the employees, engaged on a contract basis, cannot be claimed.

Gopal Chandra Kundu and Another vs. State Bank of India and Others. 2009 LLR 712 (Calcutta H.C.)

Authority directing principal employer for payment of wages to security guards of contractor not justified when already paid by contractor.

Lt. Col. Babu George M/S. Neptune Security vs. All Kerala Ex-Servicemen Security Staff and Others. 2009 LLR 743 (Kerala H.C.)

Contract workman, while working under instructions of principal employer electrocuted, relationship established.

Physical Research Laboratory (PRL) Through Y.M. Trivedi vs. Bhanwarlal Chhotalal Barot & Ors. 2009 LLR 986 (Gujarat H.C.)

Contractor employees cannot be regularised even if contractor did not have licence under CL (R&A) Act.

Tumkur Pura Karmikara Sangha vs. Municipal Council, Tumkur & Anr. 2009 LLR 1010 (Karnataka H.C.)

Principal Employer not liable to reinstate Contract Labour when contractor had control & supervision over him.

M/s Polymer Papers Ltd., Faridabad vs. Presiding Officer, Industrial Tribunal-Cum-Labour Court, Faridabad. 2009 LLR 992 (Punjab & Haryana H.C.)

DISMISSAL

Dismissal justified when Gatekeeper refused to work as supervisor of sweepers of cinema.

Krishna Mohan Sharma vs. Labour Court, Agra and Another. 2009 LLR 55 (Allahabad H.C.)

Dismissal illegal for Contesting Sarpanch election, when not followed by proper procedure.

M. Somaiah vs. A.P.S.R.T. Corporation, Hyderabad and Another. 2009 LLR 38 (Andhra Pradesh H.C.)

Dismissal justified for assaulting Sr. Officer.

R.S. Korvi vs. Peico Electronics and Electricals Ltd., Loni Kalbhor and Anr. 2009 LLR 33 (Bombay H.C.)

Dismissal not disproportionate to long absence.

Rabiya Khatun & Ors. vs. M.S.R.T.C., Akola. 2009 LLR 313 (Bombay H.C.)

In the absence of specific charge of unauthorised absence dismissal would be illegal.

Shiblal Manjhi vs. Central Coal Field Ltd. & Ors. 2009 LLR 307 (Jharkhand H.C.)

Dismissal not to be set aside even when employee requested to repay the misappropriated amount.

Syndicate Bank vs. M. Hanumanthappa. 2009 LLR 168 (Karnataka H.C.)

Even if workman is acquitted in Court, his dismissal justified for embezzlement.

Sukhbir Chand vs. Chief Manager & Ors. 2009 LLR 177 (Punjab & Haryana H.C.)

When ample evidence of embezzlement is there, dismissal not to be faulted with, even if there is no enquiry.

Chiranjil Lal Jain vs. Judge, Industrial Tribunal, Jaipur & Anr. 2009 LLR 182 (Rajasthan H.C.)

Dismissal justified for driving vehicle after alcohol consumption.

Maharashtra State Road Transport Corporation vs. Manikrao Sahabrao Chavan, Malegaon and Anr. 2009 LLR 432 (Bombay H.C.)

Dismissal justified for not issuing tickets to passengers.

Bilori vs. Delhi Transport Corporation. 2009 LLR 446 (Delhi H.C.)

Dismissal justified for habitual absence of safai karamchari.

Kiritchandra Chinubhai Pandya C/o Kalubhai P. Thakor vs. Central Bank of India & 2 Ors. 2009 LLR 424 (Gujarat H.C.)

Dismissal justified for not meeting the norms of productivity.

Management of Lakshmi Card Clothing Manufacturing Company Ltd., vs. M. Ramu and Others. 2009 LLR 366

IMPORTANT LABOUR JUDGMENTS 2009

(Madras H.C.)

In the absence of negligence of driver while causing accident resulting in to death, dismissal will be improper.
State Express Transport Corporation Ltd., Chennai vs. Presiding Officer, Labour Court, Tirunvelveli & Ors. 2009 LLR 373 (Madras H.C.)

Dismissal justified of watchman when theft occurred during his duty hours. No need to prove his negligence.
K.B. Loknathiam and Others vs. Management, Ponds India Ltd., Tindivanam and Another. 2009 LLR 383 (Madras H.C.)

Dismissal will not be proper when conductor merely failed to make entries of two tickets, already issued.
Management of Cheran Transport Corporation, Coimbatore vs. G. Balasubramaniam & Ors. 2009 LLR 437 (Madras H.C.)

No dismissal of worker who was not present on the alleged day of his incident.
Bhartia Cutler Hammer vs. Presiding Officer & Ors. 2009 LLR 422 (Punjab & Haryana H.C.)

Temporary employees rightly dismissed for committing theft of milk. Courts should keep in mind that industry survives on discipline.
Kolhapur Zilla Sahakari Dudha Utpadak Sangh, Kolhapur vs. Shivaji Shankar Pharakate and Another. 2009 LLR 452 (Bombay H.C.)

No interference with the punishment of dismissal of bus conductor guilty of collecting fares and not issuing tickets.

H. Srinivas Reddy vs. The Management of B.M.T.C. 2009 LLR 482 (Karnataka H.C.)

Absence of 4 years and 7 months from duty is enough to justify penalty of dismissal.

Krishna Kumar Pateria vs. State of M.P. and Others. 2009 LLR 547 (Madhya Pradesh H.C.)

Dismissal proper for unauthorised absence.

Sariaben Bhaskarbai Neve vs. Lions Karnavati Shantaben Vishnubhai Patel Eye Hospital. 2009 LLR 651 (Gujarat H.C.)

Dismissal justified for tampering attendance register, sleeping on duty and threatening his superior.

K. Velusamy vs. Labour Court, Coimbatore & Anr. 2009 LLR 597 (Madras H.C.)

Dismissal for forming union and raising demand charter, without even enquiry would be nullified.

Dr. Elizabeth Jean Marsh vs. Presiding Officer, Labour Court & Ors. 2009 LLR 618 (Orissa H.C.)

Dismissal proper for misappropriating cash by bus conductor.

Varinder Pal vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Chandigarh & Anr. 2009 LLR 643 (Punjab &

Haryana H.C.)

Dismissal proper when guilt proved, no matter enquiry was ex-parte and employee did not participate.

Ashok Kumar Saxena vs. Punjab National Bank H.O., New Delhi and Others. 2009 LLR 726 (Allahabad H.C.)

Dismissal justified for disobedience of superior.

Thermax Ltd. vs. Vishwanath N. Jadhav and Others. 2009 LLR 707 (Bombay H.C.)

Having failed to display destination on the board of the bus is not a serious misconduct requiring dismissal.

Management of Delhi Transport Corporation vs. Baljit Singh. 2009 LLR 796 (Delhi H.C.)

Dismissal illegal when made during pendency of Industrial Dispute without prior approval of the authority.

Larsen & Toubro Ltd. vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad & Anr. 2009 LLR 739 (Punjab & Haryana H.C.)

Dismissal justified of Mali, found involved in Dharna, not attending duties and abusing principal on microphone.

Awdhesh Kumar Singh vs. Principal, Boys High School and College, Allahabad and Others. 2009 LLR 1031 (Allahabad H.C.)

Shouting at superiors and threatening of dire consequences sufficient for dismissal.

M.Y. Khan vs. M/s. Tata Engineering & Locomotive Company Ltd. 2009 LLR 1039 (Jharkhand H.C.)

After upholding punishment, tribunal not justified in substituting the punishment of dismissal with superannuation benefits.

Federal Bank Ltd. vs. T. Sreekantan and Others. 2009 LLR 998 (Kerala H.C.)

No interference from H.C. when tribunal approved dismissal.

Ram Chandra Swain vs. Presiding Officer, Industrial Tribunal, Goutam Nagar, Bhubaneswar and Others. 2009 LLR 1001 (Orissa H.C.)

Dismissal proper, when Peon abused General Manager in state of drunkenness.

Harnek Gill vs. State Bank of Patiala, through its General Manager, Head Office, The Mall, Patiala and Anr. 2009 LLR 980 (Punjab & Haryana H.C.)

Dismissal of the workmen-being office-bearers as president and general secretary of the Workers' Union, during pendency of the proceedings pertaining to general demands, will be *prima facie* void and inoperative.

Larsen & Toubro Ltd. vs. Presiding Officer, Industrial Tribunal Cum-Labour Court-I, Faridabad and Another. 2009 LLR 1046 (Punjab & Haryana H.C.)

IMPORTANT LABOUR JUDGMENTS 2009

Dismissal justified for accepting bribe from passenger.
Shrikant R. Palkar vs. Indian Airlines and Anr. 2009 LLR 1079 (Bombay H.C.)

In the absence of enquiry, having stigmatic termination order, dismissal is liable to be set aside.

District Manager, TASMAC, Coimbatore Region, Erode vs. S. Velliyangiri. 2009 LLR 1106 (Madras H.C.)

When a member of the appellate authority passed the termination order as disciplinary authority, dismissal would be illegal.

S. Muthuram vs. Chief Executive Officer, T.N. Khadi & Village Board, Chennai & Anr. 2009 LLR 1108 (Madras H.C.)

Dismissal appropriate for the misconduct of diverting customers to another establishment.

Abheraj Jaswal vs. M/s. Godrej Boyce Mfg. Company Ltd. & Ors. 2009 LLR 1176 (Delhi H.C.)

Dismissal justified for misconduct of driving car under drunken state and hitting another car.

Mehar Singh vs. Cement Manufacturers Association. 2009 LLR 1177 (Delhi H.C.)

Dismissal of bank cashier justified for misconduct of cash shortage or temporary misappropriation of money.

Bank of India Staff Union (represented by its General Secretary), Chennai vs. General Manager, Bank of India, Chennai and Another. 2009 LLR 1235 (Madras H.C.)

When workman is found stealing aluminum scrap from the works, dismissal will be justified. Courts have to exercise their powers judiciously while granting appropriate relief, because if the person is reinstated in whom employer lost confidence, will defeat the purpose of ID Act.

Haryana Roadways Engineering Corporation, Behrampur Road Khands, Gurgaon (Haryana) Through Its General Manager vs. Industrial Tribunal-Cum-Labour Court-I (P.O.), Gurgaon and Another. 2009 LLR 1209 (Madras H.C.)

EMPLOYEE PROVIDENT FUND

Motor Transport undertakings covered under EPF Act are out of preview of Kerala Motor Transport workers welfare fund act.

Hymavathi vs. Special Dy. Tehsildar. 2008 (119) FLR 279 (Kerla HC)

Once co-operative society is covered under EPF Act, can't be de-covered on the ground that it's employee strength fell down below 50.

Kottathala Handloom Weavers Industrial Co-op. Society v. Enforcement Officer. 2008 III CLR 464 (Kerala H.C.)

Security services are covered as expert services under EPF Act.

M/s. Panther Security Services Private Ltd. vs. Employees Provident Fund Organisation, Kanpur Nagar and Another. 2009 LLR 94 (Allahabad H.C.)

On failure to pay contributions of PF by Company, directors can't be prosecuted as "employer" does not include director.

Satish Kumar Jhunjhunwala v. State of West Bengal. 2009 I CLR 118 (Calcutta H.C.)

P.F. payable on interim payment pending settlement.

Dalmia Cement (Bharat) Ltd. vs. Regional Provident Fund Commissioner, Trichirapalli. 2009 LLR 110 (Madras H.C.)

Since the college employed more than 20 employees, coverage under EPF can't be set aside.

Mahabir Singh Inter College and Anr. vs. State of U.P. and Others. 2009 LLR 299 (Allahabad H.C.)

When establishment is transferred, both previous & future employers are jointly liable for P.F. contributions.

Regional Provident Fund Commissioner, Jalpaiguri vs. Everyday Industries (India), Ltd., & Ors. 2009 LLR 194 (Cal. H.C.)

Employer does not include directors of the company. Hence their prosecution under EPF act is illegal.

Satish Kumar Jhunjhunwala vs. State of West Bengal. 2009 LLR 259 (Calcutta H.C.)

Retired employee from railway can not be treated as excluded employee under EPF Act.

Central Provident Fund Commissioner & Anr. vs. Modern Transportation Consultancy Service (Private) Ltd. & Ors. 2009 LLR 324 (Calcutta H.C.)

Deposit of 75% under section 7-O of the Employees Provident Fund & Miscellaneous Provisions Act is a precondition for maintaining appeal and not a condition for staying operation of order.

Muthoot Pappachan C. & M Services vs. Employees Provident Fund Organisation. 2009 LLR 298 (Kerala H.C.)

Charitable or religious trust not required to claim exemption under EPF Act.

Shri Jain Swetamber Nakoda Paraswnath Teerth, Mewanagar, Barmer vs. Regional Provident Fund Commissioner and Ors. 2009 LLR 295 (Rajasthan H.C.)

No PF for employees appointed by liquidator for winding up of the company.

Regional Provident Fund Commissioner vs. Rohtas Industries Ltd. 2009 LLR 407 (Patna H.C.)

Since trust not engaged in providing lodging, boarding etc. facilities to its members or guests on payment will not be covered under EPF on the basis of entry no. 16(2) of App. (I).

IMPORTANT LABOUR JUDGMENTS 2009

Shri Jain Swetamber Nakoda Paraswnath Teerth v. Regional Provident Funds Commissioner & Ors. CLR I 2009 P. 458 (Rajasthan H.C.)

Ex-parte order of PF authorities about applicability of the act can't be sustained.

Raj Kamal Electroplaters, Moradabad vs. Regional Provident Fund Commissioner, Kanpur. 2009 LLR 503 (Allahabad H.C.)

Employer is at liberty to reduce its contribution to a maximum of wage ceiling under EPF Act.

Management of Marathwada Gramin Bank, through its Chairman vs. Union of India, through the Secretary, Ministry of Labour, New Delhi & Ors. 2009 LLR 662 (Bombay H.C.)

When an employer buys a sick unit in an open auction, no liability for payment of Provident Fund dues of erstwhile sick unit can be fastened.

Employees Provident Fund Organization vs. Jai Corporation Limited. 2009 LLR 680 (Gujarat H.C.)

Request by Co. to change the date of coverage cannot be granted under EPF Act.

Novedac Prosthetic Centre v. Regional Provident Fund Commissioner & Anr. 2009 I CLR 1051 (Punjab & Haryana H.C.)

In order to exclude an apprentice from the purview of employee under PF Act, he should have been either engaged under apprentice act or standing orders. Also standing orders should permit engagement of apprentices.

Idukki District Co-op. Society Hospital Ltd. vs. Asstt. Provident Fund Commissioner. 2009 LLR 805 (Kerala H.C.)

Food subsidy and performance linked compensation is not wages under EPF Act.

Regional Provident Fund Commissioner, T.N. & Pondicherry State Employees' Provident Fund Organisation vs. Wipro Ltd. & Anr. 2009 LLR 816 (Madras H.C.) ; 2009 LLR 416

Unit running CTC scan, medical store and lab. will be cover under PF.

Kottayam District Co-Operative Hospital vs. Regional Provident Fund Commissioner. 2009 LLR 839 (Kerala H.C.)

Employees of the canteen of hospital will be covered in the EPF Act.

Dr. A.V. Joseph vs. Assistant Provident Fund Commissioner and Another. 2009 LLR 910 (Kerala H.C.)

Hospital run by co-operative society would be covered under EPF Act. Trainee and apprentices would be counted for 50 numbers as no standing order permitting society to engage apprentices and trainee. Such category would be counted as workmen.

Rajesh Krishnan vs. Asstt. Provident Fund Commissioner.

2009 LLR 912 (Kerala H.C.)

When company purchase the assets of earlier company in auction, started new manufacturing activity with new set of employees, not liable to pay earlier company employees PF contribution of past period.

Driplex Water Engineering (International) Pvt. Ltd. vs. The Regional Provident Fund Commissioner. 2009 LLR 858 (Punjab & Haryana H.C.)

M.D. of a company will not be personally liable for default in payment of PF dues.

Vimal Kumar Ravji Shah vs. Employees' Provident Fund Organisation, Solapur & Ors. 2009 LLR 953 (Bombay H.C.)

Establishment rightly covered under EPF when employer failed to produce Attendance Register to prove his contention of having less than 20 employees.

Speed Sales Private Ltd. vs. Union of India and Others. 2009 LLR 1007 (Gauhati H.C.)

Review petition under Sec. 7(B) of EPF Act for setting aside ex parte order needs to be decided first by Authority. Keeping petition aside and moving further in matter is illegal.

Laxmi Devi Shroff Adarsh Sanskrit College, Deoghar vs. Regional Provident Fund Commissioner, Ranchi and Others. 2009 LLR 994 (Jharkhand H.C.)

When two establishments functioning together as one unit, clubbing under EPF was proper.

OM Investment Corporation, Bangalore vs. Asstt. Provident Fund Commissioner, Employees Provident Fund Organisation, Bangalore. 2009 LLR 990 (Karnataka H.C.)

Amusement park viz. Silver Storm Water Theme Park. Would not come within definition of Clause (1) and (2). Come within the definition of establishment mentioned in Clause (3). Hence, proceeding initiated by P.F. Authorities was in accordance with law and would come within the coverage of Act.

Silver Storm Amusement Parks Pvt. Ltd. vs. Enforcement Officer, Employees' Provident Fund, Thrissur and another. 2009 (122) FLR 730 (Kerala H.C.)

Franchisee establishment cannot be covered under EPF as an extension of principal establishment.

Regional Provident Fund Commissioner, Tirunelveli vs. Prabha Beverages Pvt. Ltd. and Anr. 2009 LLR 972 (Madras H.C.)

Apprentices, trainees, directors, domestic servants, daily wagers and persons employed for a very short period due to some emergency or abnormal contingency are not to be counted while arriving at the figure of 20 persons for covering the establishment under EPF Act.

Grand Chemical Works vs. Presiding Officer, Employees'

IMPORTANT LABOUR JUDGMENTS 2009

Provident Fund Appellate Tribunal & Anr. 2009 LLR 1082 (Delhi H.C.)

Even if three units are owned by same family doing same activity can't be clubbed together under EPF Act since having no functional integrality.

Alaghu Pharmacy B. (represented by its Proprietrix J. Selvarani) vs. Regional Provident Fund Commissioner, Coimbatore and Anr. 2009 LLR 1123 (Madras H.C.)

Even if the PF dues payment made subsequently, FIR lodged for the offence will not be wiped out.

Dunlop India Ltd. and Another vs. Regional Provident Fund Commissioner and Others. 2009 LLR 1208 (Calcutta H.C.)

Depositing PF within 15 days of close of the month does not necessarily mean the month starting 1st to 30th. Where wages month starts from 16th to the 15th to the following month, depositing PF contribution within next 15 days will be appropriate and it will not be termed as delay in deposit PF.

Delhi Press Patra Prakashan Ltd. vs. The Regional Provident Fund Commissioner and Others. 2009 LLR 1279 (Delhi H.C.)

Recovery of PF dues should not be initiated till the expiry of appeal period.

Rollwell Forge Ltd., Rajkot vs. Employees' Provident Fund Organisation, Rajkot and Anr. 2009 LLR 1238 (Gujarat H.C.)

When construction / migrant workmen were not unidentifiable, order of PF authorities for PF contribution deposit in respect of such workers was not proper.

Ashiana Housing Limited, East Singhbhum vs. Assistant Provident Fund Commissioner, East Singhbhum & Anr. 2009 LLR 1270 (Jharkhand H.C.)

Drivers engaged by executives of the company can't be termed as company employees for PF coverage and contributions.

Employees' Provident Fund Organisation vs. L & T Komatsu Ltd. and Anr. 2009 LLR 1274 (Karnataka H.C.)

Amount paid as interim relief pending final agreement on wage increase will attract PF contribution as part of basic wage.

Regional P.F. Commissioner vs. The Administrator, Cosmopolitan Hospital. 2009 LLR 1272 (Kerala H.C.)

When review proceedings were pending, attachment order for recovery of PF dues shall not be operative.

Pyramid Saimira Theatre Ltd. Chennai vs. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Chennai. 2009 LLR 1191 (Madras H.C.)

EPF Act will continue to apply even if number of workers falls below the limit.

Gowri Shanker Theatre vs. Assistant Provident Fund

Commissioner, Vellore and Another. 2009 LLR 1195 (Madras H.C.)

ENQUIRY

Non Payment of subsistence allowance will not vitiate the enquiry unless prejudice is caused to workman.

A.V. Anthony Swamy v. Management of M/s. St. John's Medical College, Bangalore. 2008 (119) FLR 158 (Karnataka H.C.)

When the worker's representative understands the english language, enquiry can't be vitiated on the ground that it was not conducted in marathi language. More over this objection was not raised during the enquiry.

Shashikant N. Sable v. Advani Overlikon Ltd. and Anr. 2008 III CLR 340 (Bombay H.C.)

E.O. Report is his opinion about correctness of charges and does not bring any legal right or obligations.

S.A. Basha vs. Deputy Chief Security Commissioner, Railway Protection Force and Others. 2008(119) FLR 844 (Andhra Pradesh H.C.)

Non supply of preliminary report, not relied upon will not vitiate the enquiry.

S.K. Masthan vs. Southeran Power Distribution Company, Tirupathi and Others. 2009 LLR 109 (Andhra Pradesh H.C.)

Nothing illegal with enquiry, when conducted in english and not objected by workman.

Shashikant M. Sable vs. Advani Oerlikon Ltd. and Another. 2009 LLR 30 (Bombay H.C.)

Even if workman do not submit reply to charge sheet. Holding of enquiry is imperative.

British India Corporation Ltd., Cawnpore Woolen Mills Branch, Kanpur vs. Presiding Officer, Industrial Tribunal-I, Allahabad & Anr. 2009 LLR 146 (Allahabad H.C.)

When enquiry is vitiated, employer should be given opportunity to lead evidence in court.

Sahara Airlines Ltd. vs. Capt. R. Khosla. 2009 LLR 243 (Delhi H.C.)

Representation of workman in enquiry is not an absolute right.

St. Stephen's Hospital vs. Workman Shri S.K. Adhikari. 2009 LLR 246 (Delhi H.C.)

No enquiry without giving opportunity to give explanation of charge sheet.

Little Flower Primary School And vs. (1) Jt. Director of Elementary Education, Chennai., (2) Distt Elementary Education Officer, Dindugal Distt., (3) Asstt. Elementary Education Officer, Chinnaalapatti, Dindugal Distt., (4) G. Jothi. 2009 LLR 335 (Madras H.C.)

IMPORTANT LABOUR JUDGMENTS 2009

Unless the rules specifically permit, a delinquent employee has no right to be represented through a lawyer or agent other than a co-employee.

St. Stephans Hospital v. Workman Shri S.K. Adhikari. FLR (120) 2009, P. 64 (Delhi H.C.)

Holding separate enquiries and awarding different types of punishments to different employees involved in the same incident is not prima facie proper.

Kaushal Kishore Chaturvedi vs. U.P. Road Transport Corporation & Ors. FLR (121) 2009 P. 645 (Allahabad H.C.)

Enquiry not vitiated merely because report was not sent to workman.

U.P. State Road Transport Corporation vs. State of U.P. and Others. 2009 LLR 719 (Allahabad H.C.)

Enquiry not illegal merely on the ground that the enquiry officer was junior to the delinquent employee.

Dinesh Kumar Sharma vs. Chairman, Vidur Gramin Bank, Bijnore and Others. 2009 LLR 722 (Allahabad H.C.)

Enquiry invalid when neither date time and venue was communicated to workman nor relevant documents provided to him.

Hafizur Rehman vs. D.I.O.S., Varanasi and Others. 2009 LLR 763 (Allahabad H.C.)

Enquiry not invalid when workman was allowed to take assistance of his colleague but he did not.

Virender Singh Conductor B.No. 21473 vs. Delhi Transport Corporation. 2009 LLR 800 (Delhi H.C.)

Enquiry vitiated where workman did not sign the proceedings in token of having read and understood the contents of the reports.

Management of M/s. Tubro Energy Ltd., Pulivalam rep. by its Executive Director vs. Presiding Officer, Labour Court, Vellore & Anr. 2009 LLR 775 (Madras H.C.)

Subsistence allowance is part of wages under 2 (VI) of payment of wages act but will not amount to deduction in wages.

M/s. Kshetriya Sri Gandhi Ashram, Gorakhpur vs. Dy. Labour Commissioner/Prescribed Authority Under Payment of wages Act and Another. 2009 LLR 897 & CLR II 2009 Pg. 292. (H.C.)

When charge-sheet issued and charges denied, enquiry is imperative.

H.M. Manjunath vs. Board of Directors/Appellate Authority, Bangalore and Anr. 2009 LLR 830 (Karnataka H.C.)

Furnishing copy of the report of the Enquiry Officer to the delinquent before passing an order of punishment is mandatory.

M. Rajagopalan vs. Principal Labour Court, Madurai & Anr.

2009 II CLR 425 (Madras H.C.)

When enquiry was not as per principles of natural justice, Conciliation Officer should not have granted approval for dismissal pending proceedings.

Awadesh Singh Yadav & Ors. vs. Labour and Enforcement Officer, Dadra & Nagar Haveli & Ors. 2009 LLR 961 (Bombay H.C.)

When workman failed to challenge the validity of enquiry, cannot be agitated in writ.

Patel Bharatkumar Naranbhai vs. Gujarat Steel Tubes Limited. 2009 LLR 977 (Gujarat H.C.)

No interference with the findings of the Enquiry Officer when the enquiry is in accordance to the rules of natural justice.

Harnek Gill vs. State Bank of Patiala. 2009 II CLR 645 (Punjab & Haryana H.C.)

Even in the case of ex-parte enquiry, EO has to give supporting reasons of its findings in the report.

Dula Ram Chaudhari vs. Managing Director, U.P. Co-Operative Spinning Mills Federation Ltd. & Ors. 2009 LLR 1092 (Allahabad H.C.)

Enquiry will not be vitiated merely on the ground that no presenting officer was appointed by the management for the enquiry.

Vijay Singh vs. Delhi Transport Corporation. 2009 LLR 1144 (Delhi H.C.)

When workman did not participate in the enquiry, failed to reply to show cause notice, also asked to be pardoned, dismissal should not be set aside.

Ahmedabad Electricity Co. Employees Co-op. idvdkarayakari vs. Nilesh M. Delhiwala. 2009 LLR 1103 (Gujarat H.C.)

When enquiry is held as fair and proper punishment awarded should not be interfered with.

Andhra Pradesh Mills Ltd. Rajahmundry (rep. by its Legal Officer Mr. N.Srinivasa Rao) vs. Industrial Tribunal-cum-Labour Court, Visakhapatnam and Anr. 2009 LLR 1268 (Andhra Pradesh H.C.)

When enquiry fairness is not challenged, punishment imposed can't be termed as harsh.

Ghelabhai Chhibabhai Patel vs. Divisional Controller. 2009 LLR 1200 (Gujarat H.C.)

In domestic enquiry the misconduct of the delinquent need not be proved beyond reasonable doubt.

Management of Tata Tea Ltd. vs. Presiding Officer, Labour Court, Coimbatore & Anr. LLJ III 2009 P. 693 (Madras H.C.)

ESI

IMPORTANT LABOUR JUDGMENTS 2009

Persons agreed to receive 20% out of net profit as remuneration will not be termed as employee for the purpose of coverage under ESI Act.

Regional Director, Employees State Insurance Corporation vs. Anadha Silks Paradise. 2008 LLR 1243 (Madras H.C.)

In the absence of identification of occupier, ESIC can't impose liability on a person as occupier.

Regional Director, E.S.I. and Another vs. Rahmanliya Sago Factory, by Subsequent Purchaser, Syed Mustafa Sago Factory. 2008 LLR 1259 (Madras H.C.)

ESIC is not empowered to direct employer of an establishment to first deposit the amount as sought to be recovered, only then the hearing and objections will be allowed.

Naresh Chandra Bhargava vs. Chairman, Employees State Insurance Corporation, Kanpur and Others. 2008 LLR 1262 (Allahabad H.C.)

E.S.I. is applicable on education institutions of minority.
Maharishi Shiksha Sansthan and another vs. State of U.P. and another. 2008 (119) FLR 935 (Allahabad H.C.)

ESIC Cannot ask for contributions for the period prior to applicability notification.

Employees State Insurance Corporation vs. Park Fishnet Pvt. Ltd. 2008 (119) FLR 1115 (Gujarat H.C.)

No ESI on amount paid to contractor for constructing building on account of material cost, machinery and other expenses.

Regional Director, ESI Corporation, Bangalore and Others vs. Management of Shagil Precision India. 2009 LLR 72 (Karnataka H.C.)

No ESI on freight coolly, ironing, labour charges and conveyance.

Regional Director, Employees State Insurance Corporation vs. Madhavi Enterprises, Madras. 2009 LLR 17 (Madras H.C.)

ESI Act is applicable to educational institution including university and school in U.P.

Maharishi Shiksha Sansthan and Another vs. State of U.P. and Another. 2009 LLR 265 (Allahabad H.C.)

Sweet shop using LPG will be covered under ESI.

Employees State Insurance Corporation vs. Premlal. 2009 LLR 282 (Kerala H.C.)

Provision of requiring of an employer to pre-deposit 50% of due contribution under ESI Act is not unreasonable and arbitrary.

Harshal Paper and Board Mill Ltd. vs. Union of India & Ors. 2009 LLR 325 (Madhya Pradesh H.C.)

Hotel having less than 20 workmen using freezer and

cooler will not be covered under E.S.I.

Regional Director, Employees State Insurance Corporation vs. Serofie Bernard Vaz. 2009 LLR 361 (Bombay H.C.)

No writ will lie in H.C. against order of ESI authorities without exhausting the remedy of going to ESI court.

M/s Dhanbad Cold Storage Pvt. Ltd. vs. Employees State Insurance Corporation and Others. 2009 LLR 404 (Jharkhand H.C.)

Damages can be waived if the delay in payment of contribution is due to bonafide reasons.

E.S.I. Corporation v. Bharat Hotel. CLR I 2009 P. 349 (Kerala H.C.)

ESI court can't reduce the damages for delayed payment without supportive reasons.

Employees State Insurance Corporation vs. M/s. Reliable Carriers Pvt. Ltd. 2009 LLR 392 (Madhya Pradesh H.C.)

Based on factual findings, no ESI on freight and coolie charges, ironing charges, labour charges and conveyance charges.

Regional Director, Employees State Insurance Corporation vs. Madhavi Enterprises, Madras. 2009 LLR 401 (Madras H.C.)

To make the ESI Act applicable on any establishment, there should atleast 10 "coverable" employees (getting salary in the limit) and not total employees.

Employees State Insurance Corporation, Orissa Region vs. Gujarat Co-operative Milk Marketing Federation Ltd. 2009 LLR 615 (Orissa H.C.)

Apprentice engaged either under the act or standing orders is not covered under ESI.

Employees' State Insurance Corporation vs. Arvind Mills Ltd. 2009 LLR 744 (Gujarat H.C.)

When the dismissal is for habitual absence subsequent to the period of sickness under ESI, it will not hit by sec. 73 of ESI Act.

Ramchandra Sitaram Kale (D) vs. Maharashtra State Road Transport Corporation. 2009 LLR 788 (Bombay H.C.)

Amounts paid to independent contractors for construction of building do not amount to wages under ESI

Regional Director, ESI Corporation, Bangalore & Ors. v. Management of Shagil Precision India Mangalore. 2009 II LLJ 420 (Karnataka H.C.)

When overtime paid to independent contractors, ESI will have to be paid on such amount.

Raj Mechanical Industries and Another vs. Employees' State Insurance Corporation and Others. 2009 LLR 714 (Punjab & Haryana H.C.)

IMPORTANT LABOUR JUDGMENTS 2009

Employer not to dismiss or punish the employee during the period of sickness under ESI.

Ramchandra Sitaram Kale vs. M.S.R.T.C. LLJ II 2009 P. 686 (Bombay H.C.)

No prosecution against employer for non payment of ESI contribution when he obtained stay against such demand.

Pon Venkatesh K. and anr. vs. Employees' State Insurance Corporation, Madurai. 2009 LLR 828 (Madras H.C.)

Establishment employing less than 10 employees is not liable to contribute under the E.S.I. Act.

Employees' State Insurance Corporation, Orissa Region, Bhubaneswar vs. Gujarat Co-operative Milk Marketing Federation Ltd. LLJ II 2009 P. 652 (Orissa H.C.)

Even when the workers are posted in non implimented area, far away from head office, employer is liable to pay ESI contribution of all workman since Act is applicable on head office.

Employees' State Insurance Corporation vs. New Azad Transport Co-Operative Society Ltd. and Others. 2009 LLR 852 (Punjab & Haryana H.C.)

ESI not applicable to Municipality employees availing better facilities.

Kakinada Municipality vs. Employees' State Insurance Corporation, Hyderabad & Ors. 2009 LLR 1051 (Andhra Pradesh H.C.)

Apprentices under the Act and standing orders are out of ESI.

Employees' State Insurance Corporation vs. Arvind Mills Ltd. 2009 LLR 1017 (Gujarat H.C.)

An employee who has ceased to be a member of the ESI will not be entitled to disablement benefit in an accident.

Deputy Regional Director, Employees' State Insurance Corporation, Coimbatore vs. Chinnachamy and Anr. 2009 LLR 1026 (Madras H.C.)

Injury caused while coming from home to workplace, will be covered under ESI and compensation/benefits will be paid.

Sawraj Yadav alias Suraj Yadav vs. Employees' State Insurance Corporation and Anr. 2009 III CLR 57 (Punjab & Haryana H.C.)

Depositing ESI before filing complaint by ESIC against employer is no ground for discharge of the accuse.

Regional Director, Employees' State Insurance Corporation vs. Supriya S. Bandal (Smt.) & Ors. 2009 LLR 1073 (Bombay H.C.)

In case of suicide of workman due to depressive

neurosis caused due to employment injury, ESIC is liable to pay compensation.

E.S.I. Corporation vs. Leela. 2009 LLR 1167 (Kerala H.C.)

A club providing venue for sports and facilities for recreation to its members in within the purview of ESI Act.

Waltair Club vs. Employees' State Insurance Corporation. LLJ III 2009 P. 652 (Andhra Pradesh H.C.)

For making recovery of ESI dues, first it is to be determined under sec. 45A(1) of ESI Act.

Hazari Sah vs. State of Bihar and Others. 2009 LLR 1193 (Patna H.C.)

FACTORIES ACT

Magistrate can't direct the accused to produce attendance register under prosecution lauched against the factory.

M/s. Tata Construction Project Ltd. v. State of Jharkhand & Anr. 2008 (119) FLR 240 (Jharkhand H.C.)

Factories Act not applicable to schools.

Bishop's School, Ranchi and Another vs. State of Bihar (Now Jharkhand) and Others. 2009 LLR 96 (Jharkhand H.C.)

Head Office of a factory is not an industrial establishment unless it is registered under the Factories Act.

Commonwealth Trust India Ltd. v. Labour Commissioner. CLR I 2009, P. 475 (Kerala H.C.)

Water treatment plant not a 'factory' under Factories Act.

M/s. Central Coal Fields Ltd. vs. State of Bihar and Another. 2009 LLR 1053 (Jharkhand H.C.)

Even if workers did not work for minimum 42 hours in a week as agreed, working on Sunday (work off) will attract O.T. payment- such withdrawal of benefit is not permissible under ID Act (Sec.-9-A).

Food Corporation of India vs. Union of India and others. 2009 (123) FLR 480 (Gujarat H.C.)

Limitation period of filing prosecution under factories act starts from the date when contraventions came to the notice of the inspector and not the date of accident.

H.M.P. Singh and Others vs. State of Jharkhand and Another. 2009 LLR 1198 (Jharkhand H.C.)

GRATUITY

Technical teacher of Engineering College is an 'employee' within the meaning of Payment of Gratuity Act.

Birla Institute of Technology v. State of Jharkhand & Ors. 2008 III CLR 472 (Jharkhand H.C.)

No forfeiture of gratuity on retaining the official house after retirement.

Hindustan Antibiotics Ltd. vs. Pramodini Rohidas Sutar and

IMPORTANT LABOUR JUDGMENTS 2009

Other. 2009 LLR 24 (Bombay H.C.)

Gratuity can only be forfeited if employee is convicted in offence of moral turpitude.

Karnataka State Road Transport Corporation and Another vs. Mahadev and Others. 2009 LLR 138 (Karnataka H.C.)

Educational institution like an agricultural college is covered by the Payment of Gratuity Act.

Principal, Krishi Vidyalaya, Shivaji Nagar, Pune v. M/s. Dwarkabai Haribhau Hingane. LLJ I 2009, P. 488 (Bombay H.C.)

Term "employer" under payment of gratuity act has a wider meaning and angle.

Management Seyadu Beedi Company, Tirunelveli vs. Appellate Authority under Payment of Gratuity Act & Anr. 2009 LLR 420 (Madras H.C.)

Non-Government educational institutions are bound to pay gratuity to its employees under the Payment of Gratuity Act.

Shri Agarwal Shiksha Samiti and Another vs. Moti Chand Jain and Others. 2009 LLR 401 (Rajasthan H.C.)

When gratuity paid in excess, employee is under obligation to refund the amount.

Chairman-Cum-Managing Director M/s. Western Coalfields Ltd. and others vs. Appellate Authrotiy Under Payment of Gratuity Act, 1972 and Regional Commissioner (Central) and another. 2009 LLR 547 (Bombay H.C.)

Payment of Gratuity Act not applicable to state govt. employees.

State of U.P. and Another vs. Ram Chandra Ram and Another. 2009 LLR 633 (Allahabad H.C.)

In case of loss, damage or destruction caused by the employee due to his wilful omission or negligence, forfeiture of gratuity is mandatory.

D.S. Chauhan v. Food Corporation of India & Ors. LLN (1) 2009, P. 547 (Punjab & Haryana H.C.)

No deduction from the gratuity amount without an express order passed u/s. 2-A of the Act.

Bangalore Metropolitan Transport Corporation vs. Deputy Labour Commissioner, Bangalore. 2009 LIC P. 2186 (Karnataka H.C.)

Gratuity cannot be withheld in the absence of existence of any conditions mentioned in sub clause(6) of Sec. 4 of Gratuity Act.

Amod Prasad Rai vs. State of U.P. and Another. 2009 LLR 1004 (Allahabad H.C.)

Forfeiture of gratuity can only be done where employee convicted for moral turpitude.

Karnataka State Road Transport Corporation and Anr. vs.

Mahadev and Ors. 2009 LLR 978 (Karnataka H.C.)

Gratuity of an employee can only be forfeited only when he is dismissed from service for the prescribed misconducts under section 4(6) of the Payment of Gratuity Act.

Panchmahal Distt. Coop. Bank Ltd. vs. Harjivandas Purshottamdas Prajapati. 2009 LLR 1156 (Gujarat H.C.)

MD of the company is not personally liable to pay gratuity to the employee but will be only has to ensure for payment from company assets.

Tensile Steel Ltd. & Anr. vs. Natwarsingh Udesingh Raj. 2009 LLR 1223 (Gujarat H.C.)

The delay of even beyond additional 60 days for filing appeal under payment of gratuity act can be condoned in exceptional circumstances.

Backbone Projects Ltd. vs. Yogesh Bhavchandbhai Gadhiya & Anr. 2009 LLR 1242 (Gujarat H.C.)

INDUSTRY

"Dharamshala" is industry and employees will be entitled for minimum wages.

Shree Marwari Seva Sangh, Varanasi vs. State of U.P. and Others. 2009 LLR 41 (Allahabad H.C.)

Mess of railway zonal training school would be industry.

Workmen of Northern Railway Zonal Training School vs. Management of Mess Committee, Uttar Railway. 2009 LLR 249 (Delhi H.C.)

INDUSTRIAL DISPUTES ACT

A claim of equal work for equal wages will not be maintainable under section 33 C (2) of the I.D. Act.

U.P. State Electricity Board, Aligarh and Anr. v. Smt. Indrawati & Ors. 2008 (119) FLR 10 (Allahabad H.C.)

Conciliation officer can't assume the powers of court.

Riyan International School Karmachari Sangh through its President, Sector-V Noida, Gautam Budh Nagar vs. State of U.P. and Others. 2008 LLR 1261 (Allahabad H.C.)

When union president is advocate and represent the case before court, employer advocate can't be denied this facility.

B.M. Jambunathan vs. United News of India (UNI), New Delhi and Another. 2008 LLR 1269 (Andhra Pradesh H.C.)

Rejection of application for approval of workman's dismissal is rightly declined since the employer can lead further evidence.

I.T.C. Ltd., Tiruvottiyur, Chennai vs. Industrial Tribunal, Madras and Others. 2008 LLR 1276 (Madras H.C.)

In the absence of explanation of delayed raising of

IMPORTANT LABOUR JUDGMENTS 2009

dispute, Govt. was right in refusing the dispute to refer.
Manoj Kumar Sahu vs. Union of India and Others. 2009 LLR 43 (Allahabad H.C.)

Conciliation officer cannot decide whether the person is workman or not.

Bikraditya Sing @ B.D. Singh vs. Civil Judge (J.D.), Shrawasti and Others. 2009 LLR 50 (Allahabad H.C.)

Once procedure prescribed for Industrial dispute is followed, Government has jurisdiction to make reference.

Hindustan Machine Tools Ltd. v. Government of A.P. & Ors. LLN(4) 2008 P. 197 (Andhra Pradesh H.C.)

Jurisdiction of Labour Court under Sec. 33(1)(a) of I.D. Act is limited to cases of alteration or change of conditions of service when the industrial dispute is pending before it.

Hindustan Machine Tools Ltd. v. Government of A.P. & Ors. LLN(4) 2008 P. 197 (Andhra Pradesh H.C.)

Getting Pension and having agriculture land would amount to gainful employment and workman will not get interim relief.

Municipal Council, Sikar & Ors. v. Rawat Singh & Anr. 2008 III CLR 854 (Rajasthan H.C.)

When workman is not able to prove 240 days working in calender year, rejection of dispute by court is proper.

Brij Kishore Chaubey & Ors. vs. Presiding Officer, Labour Court, Allahabad & Ors. 2009 LLR 270 (Allahabad H.C.)

Dispute can't be referred after superannuation.

A.R. Swamy vs. Government of Andhra Pradesh & Anr. 2009 LLR 262 (Andhra Pradesh H.C.)

Change of working hours by 15 minutes will not be violation of section 33 of I.D. pending dispute.

M/s. Richa & Company vs. Shri Suresh Chand and Others. 2009 LLR 333 (Delhi H.C.)

Even if establishment is closed, employer has to pay last drawn wages to workman pending proceedings.

Iron Rolling Mills Pvt. Ltd. vs. Vinod kumar R. Singh. 2009 LLR 155 (Gujarat H.C.)

Effecting change as per settlement do not require compliance of section 9A of I.D. Act.

T. Rajamanickam vs. Binny Ltd. (B&C Mills), Madras & Anr. 2009 LLR 323 (Madras H.C.)

Dispute of oral termination after 13 years by casual worker can't be sustained.

Ram Chandra Dixit vs. Union of India. 2009 LLR 398 (Allahabad H.C.)

Disputed questions of entitlement of pay scale can neither be decided under P.W. Act nor sec. 33(c)(2) of

I.D. Act.

D.A.V. Public School (U.P.), Meerut vs. Prescribed Authority (Minimum Wages Act)/Assistant Labour Commissioner, Bijnor and Others. 2009 LLR 399 (Allahabad H.C.)

Supervisor not entitled to claim any relief under sec. 33(c)(2) of I.D. Act.

H. Rama Murthy vs. K.R.D. Technologies Limited & Anr. 2009 LLR 380 (Andhra Pradesh H.C.)

High Court can't reject the application of interim relief under sec. 17 B of I.D. Act.

Ninan Thomas vs. Oil & Natural Gas Corpn. Ltd. & Anr. 2009 LLR 440 (Bombay H.C.)

Medical reimbursement being not based on existing rights can't not be claimed under sec. 33(c)(2) of I.D. Act.

Devdas Babu Shetty vs. General Education Academy and Another. 2009 LLR 447 (Bombay H.C.)

The term 'employer' does not include Director.

Satish Kumar Jhujunwala v. State of West Bengal. CLR 1 2009, P. 118 (Calcutta H.C.)

Seeking compassionate appointment will be industrial dispute under sec. 2(k) of I.D. Act.

Delhi Development Authority vs. Sudesh Kumar & Anr. 2009 LLR 448 (Delhi H.C.)

Association which admits non-employers as its members is not an association of employers within the meaning of S.36 of I.D. Act.

Association of Gujarat Employers v. Industrial Tribunal & Ors. CLR I 2009, P. 373 (Gujarat H.C.)

Application u/s. 33-C(2) of the Act is in the nature of execution proceeding.

Management of Binny Ltd. (formerly known as Buckingham & Carnatic Mills Ltd.) v. Presiding Officer, Principal Labour Court & Ors. CLR I 2009, P.532 (Madras H.C.)

Increasing working hours from 6½ to 8 hours without giving notice under sec. 9A of I.D. Act is illegal.

Maharashtra State Power Generation Company Ltd. (Mahagenco) vs. Maharashtra Vij Mandal Kamgar Sangh (affiliated to Bharatiya Mazdoor Sangh) & Anr. 2009 LLR 461 (Bombay H.C.)

When claim of Over Time is disputed by the employer, controversy would fall beyond the scope of sec. 33-C(2) of I.D. Act but at the same time labour court jurisdiction is not so limited so as to dismiss the claim out rightly.

Pioneer Embroideries Ltd., Mumbai vs. Prithvi Singh and Others. 2009 LLR 546 (Bombay H.C.)

In the absence of any proof of last drawn wages produced by the workman, no interim relief under sec.

IMPORTANT LABOUR JUDGMENTS 2009

17-B of I.D. Act.

G.E. India Industrial (P) Ltd. vs. Second Labour Court & Ors. 2009 LLR 537 (Calcutta H.C.)

Shifting of establishment does not constitute industrial dispute.

Birla Corporation Ltd. (Unit Soorah Jute Mill) Sramik Union vs. Birla Corporation Ltd. & Ors. 2009 LLR 558 (Calcutta H.C.)

No dispute when workman failed to prove his working of 240 days.

Becharbhai Naranbhai vs. Executive Engineer. 2009 LLR 521 (Gujarat H.C.)

When delay of raising industrial dispute not explained, reference rightly rejected by govt.

A. Narayana Rao vs. Government of India, Ministry of Labour and Anr. 2009 LLR 526 (Madras H.C.)

Govt. can't refuse to refer the dispute on the basis of being sales representative not a workman under I.D. Act.

Shahid Ahmad Khan vs. Deputy Labour Commissioner, Agra and Another. 2009 LLR 603 (Allahabad H.C.)

Award of court does not expire even after period of one year but remains binding till altered.

U.P. State Bridge Corporation Ltd. vs. Prescribed Authority, Labour Court, U.P., Varanasi and Another. 2009 LLR 635 (Allahabad H.C.)

When quantum of dues not denied by the employer, claim of the workman is sustainable.

Municipal Corporation of Greater Mumbai vs. Mohanrao Buswasaheb Shinde. 2009 LLR 624 (Bombay H.C.)

When labour commissioner reviewed the order of permission to close down the establishment, no further reference can be made to the court on this account.

Paint Employees Union, Mumbai vs. Kansai Nerolac Paints Ltd., Mumbai. 2009 LLR 682 (Bombay H.C.)

Even in the absence of appointment letter and attendance record, employer-employee relationship can be established by other documents.

Albert David Ltd. and Another vs. Seventh Industrial Tribunal, W. Bengal & Ors. 2009 LLR 594 (Calcutta H.C.)

To disallow interim relief to workman pending adjudication in HC, affidavit of management officer regarding his gainful employment based on the disclosure by workman's daughter will not be tenable.

Union of India & Ors. vs. Baljit Singh. 2009 LLR 572 (Delhi H.C.)

A dispute can also be raised where worker's termination was done and not at the place where he was appointed.

Centre of Medical & Sales Representatives Union (North East

Region) vs. Vice-President (Marketing) Fair Deal Corpn. (P) Ltd. 2009 LLR 605 (Gauhati H.C.)

Raising dispute after 13 years would be barred by delay and laches as it was ex facie bad and incompetent.

Steel Authority of India, Bhadravathi vs. Secretary, Government of India, Ministry of Labour, New Delhi & Ors. 2009 LLR 666 (Karnataka H.C.)

Back wages awarded by tribunal can be determined in terms of money under sec. 33C(2) of I.D. Act.

Rameshwar Lal vs. Hindustan Zinc Ltd. & Anr. 2009 LLR 672 (Rajasthan H.C.)

Entitlement of arrears of wages is an existing benefit, can be computed under sec. 33(C)(2) of I.D. Act.

SBEC Sugar Ltd., Baghat vs. Labour Court, Meerut and Others. 2009 LLR 721 (Allahabad H.C.)

When cleaner was allowed to drive bus on his request for some time, can't claim the wages and status of driver.

Maharashtra State Electricity Distribution Co. Ltd., Nagpur vs. Dnyaneshwar Pralhad Sondawale. 2009 LLR 761 (Bombay H.C.)

Proceedings under sec. 33(C)(2) of the I.D. Act are in the nature of execution proceedings and claim must be capable of being computed.

Management of Tamil Nadu State Transport Corporation (Villupuram Div.II) Ltd., Vellore vs. Presiding Officer, Labour Court & 1112 Ors. 2009 LLR 776 (Madras H.C.)

Last drawn wages to be paid by the employer as interim relief no matter workman is employed on fresh appointment and not reinstated as per order.

Management of M/s. Gem Manufacturers Pvt. Ltd., Coimbatore vs. Presiding Officer, Labour Court, Coimbatore & Anr. 2009 LLR 782 (Madras H.C.)

Benefit of encashment of casual leave extended to worker since long, can't be withdrawn by the employer unilaterally being a customary right.

Ambur Co-Operative Sugar Mills Ltd. vs. Ambur Co-Operative Sugar Mills National Workers Union and Others. 2009 LLR 813 (Madras H.C.)

Calculation of 240 working days in a calendar year is to be made from the date of termination and then counting backwards.

Chhote Lal vs. Regional Manager, Bank of Baroda, Bareilly & Ors. LLJ II 2009 P. 625 (Allahabad H.C.)

Conciliation officer is limited to initiation of proceedings. He can't enter into merits of dispute.

Associated Cement Staff Union, Mumbai vs. State of Maharashtra and Others. 2009 LLR 943 (Bombay H.C.)

IMPORTANT LABOUR JUDGMENTS 2009

When under cash award scheme, category of workers are excluded after modification, such workers not entitled to get any relief under sec. 33 C (2) of the I.D. Act.

M/s. Mineral Exploration Corporation Ltd. vs. Presiding Officer, Labour Court, Hazaribagh and Others. 2009 LLR 842 (Jharkhand H.C.)

The receipt of notice from conciliation officer will be construed as pendency of conciliation proceedings.

Management of Bharathan Publication (P) Ltd. vs. (1) Labour Officer-III, Kuralagam, Chennai, (2) Bharathiya Employees' Mazdoor Sangh (Regd.). 2009 LLR 885 (Madras H.C.)

It is for the employee to prove that not only he was employed but also worked for 240 days in a year.

M/s. Ghai Rubber India vs. Dev Raj and Another. 2009 LLR 837 (Punjab & Haryana H.C.)

Application under 33 of I.D. Act for permission to terminate workman pending general demand dispute will lie only before conciliation officer and not labour court.

Ram Sanjeevan & Ors. vs. Presiding Officer, Labour Court, U.T. Chandigarh & Anr. 2009 LLR 867 (Punjab & Haryana H.C.)

Definition of employee under Delhi Shops Act cannot be considered in proceedings under I.D. Act.

Chander Sain and Others vs. J.B. Garments. 2009 LLR 959 (Delhi H.C.)

When workman worked on different jobs from time to time, all such periods cannot be clubbed together for 240 days calculation.

Rambhai Ranabhai Savdharia vs. Range Forest Officer. 2009 LLR 1024 (Gujarat H.C.)

Power to prosecute employer under I.D. Act not to be delegated by L.C. to A.L.C.

Natural Remedies Pvt. Ltd., Bangalore vs. Commissioner of Labour, Karnataka, Bangalore and Another. 2009 LLR 1053 (Karnataka H.C.)

Benefit u/s.33-C(2) sought to be computed must be existing.

SBEC Sugar Ltd. Baghpat vs. Labour Court, Meerut & Ors. LLJ III 2009 P. 389 (Allahabad H.C.)

No adjudication can be sought regarding permanency in an application u/s. 33-C(2) of the I.D. Act.

Motiram Lorya Patil vs. Tata Electric Companies, Transmission Division, Kalyan & Anr. CLR II 2009 P. 847 (Bombay H.C.)

Even when industry becomes sick, interim relief has to be paid to employee under sec. 17(b) of ID Act.

Cement Corporation of India vs. Shriram Chaurasia & Ors. 2009 LLR 1069 (Delhi H.C.)

When workman asked to resume duties but failed,

no entitled to any relief.

Bashirmiya Najjumiya Malik vs. Kaymig Agencies. 2009 LLR 1096 (Gujarat H.C.)

Once the charges are proved, the court would normally not interfere with the decision regarding quantum of penalty.

Gujarat State Road Transport Corporation vs. Raghabhai Zalambhai Talal. 2009 LLR 1099 (Gujarat H.C.)

I.D. Act does not make any distinction between a part-time and full-time employee.

Taluka Development Officer & Anr. vs. Saileshkumar Narendrabhai Ojha. 2009 LLR 1112 (Gujarat H.C.)

When initial appointment of an employee was illegal, permission under sec. 33 of ID Act will not be applicable.
Kameshwar Rai and Others vs. State of Bihar and Others. 2009 LLR 1163 (Patna H.C.)

Conciliation officer on a complaint of unfair labour practice, has to endeavor for settlement of dispute and not to see the validity of enquiry.

A.B.N. Amro Bank N.V. vs. Union of India and Others. 2009 LLR 1204 (Calcutta H.C.)

When a driver was engaged by manager in his personal capacity, no employer-employee relationship exists between driver and the company.

Subash Chand vs. M/s Mitsui & Company. 2009 LLR 1176 (Delhi H.C.)

Industrial tribunal can't go beyond the scope of reference by directing regularization of casual workers along with parity of wages with permanent employees.

Wildlife Institute of India vs. Presiding Officer & Ors. 2009 LLR 1258 (Delhi H.C.)

Approval for dismissal by court under sec. 33(2)(b) of ID Act proper when workman absconded and assaulted the superior.

Management of Daisajan Tea Estate vs. General Secretary, Bharatiya Chah Majdoor Sangha & Ors. 2009 LLR 1231 (Gauhati H.C.)

Approval for dismissal by court pending proceedings not proper when workers involved were acquitted by criminal court for the same offence.

P.A. Girish & Anr. vs. The Management of M/s BPL Ltd., Bangalore & Anr. 2009 LLR 1216 (Karnataka H.C.)

When period of employment for which arrears of salary claimed is disputed, no remedy is available under sec. 33C(2) of ID Act.

Prem Kumar Singh and Another vs. State of Bihar and Others. 2009 LLR 1214 (Patna H.C.)

When reference rejected by the Govt., HC will not

IMPORTANT LABOUR JUDGMENTS 2009

interfere, when there is no satisfactory explanation for delay of filing petition after 6 years.

Gyarsilal vs. State & Ors. 2009 LLR 1186 (Rajasthan H.C.)

MISCONDUCT

Assault on Manager by employee holding him responsible for death of two employees outside the premises, would *prima facie* amount to misconduct within the premises of factory.

Automotive Manufacturers Ltd. vs. Member, Industrial Court, Nagpur and another. 2009 (122) FLR 884 (Bombay H.C.)

In order to amount to moral turpitude there must be an offence transgressing the moral code coupled with baseness or depravity of character.

Padmanabhan A. vs. Joint Commissioner of Labour, Chennai & Anr. LLJ III 2009 P. 414 (Madras H.C.)

MINIMUM WAGES

When minimum wages not paid, intention of law is to give compensation to workman and not penalise employer.

Kerala Automobiles Ltd. v. Naveetha P. (Mrs.) 2008 III LLJ 530 (Delhi H.C.)

When the company is not impleaded, M.D. of the company can't be prosecuted under M.W. Act.

Sanjeev Gupta vs. State Govt. of N.C.T. of Delhi. 2008 LLR 1275 (Delhi H.C.)

Compensation justified when workers paid less than minimum wages.

A.S. Lally, Major (Retd.) vs. Assistant Labour Commissioner and Others. 2009 LLR 100 (Punjab & Haryana H.C.)

A claim under MV Act not barred by sec. 53 of ESI Act.

Kuriakose vs. Santosh Kumar. 2009 LLR 641 (Kerala H.C.)

PAYMENT OF WAGES ACT

When a worker is covered by payment of Wages Act, the deduction from his salary cannot exceed 75%. Hence the High Court directed the employer not to make 90 percent deduction from wages of the petitioner.

S. Hussain Bee vs. A.P. State Road Transport Corporation, Hyderabad and Others. 2008 LLR 1258 (Andhra Pradesh H.C.), LLJ I 2009 P. 342

The Authority under Payment of Wages Act is not empowered to review its decision since the appeal can be filed by the aggrieved party.

Shiv Shankar Lal Tiwari vs. Authority of Payment of Wages Act, Kanpur and Another. 2008 LLR 1273 (Allahabad H.C.)

P.W.A. authority is competent to decide about the applicability of the act.

Ordinance Factory Co-Operative Society Ltd. and Others vs. Prescribed Authority (Under Payment of Wages Act) Assistant Labour Commissioner, Kanpur and Others. 2009 LLR 265 (Allahabad H.C.)

5 Times penalty on delayed payment of wages will not be tenable under P.W. Act.

Vijay Picture Palace and Others vs. State of U.P. and Others. 2009 LLR 507 (Allahabad H.C.)

Agriculture workers are not covered under payment of wages act.

Ashraf (Dead) by LRs. vs. Deputy Labour Commissioner, Meerut and Others. 2009 LLR 717 (Allahabad H.C.)

PROBATIONER

In case of conflict between the appointment letter of a probationer and the terms of settlement between the management and union about the duration of probationary period, later will prevail.

Management of Ambanand Estate v. General Secretary, Kerala & Anr. CLR I 2009, P. 479 (Kerala H.C.)

Use of word "dishonest" or "dishonest means" in terminating the services of probationer would not amount to aspersion or casting stigma.

Nageshwar Prasad and State of Bihar and others. 2009 (121) FLR 758 (Patna H.C.)

RESIGNATION

When a workman offers resignation, heavy duty vests on appointing authority to ensure that letter of resignation is submitted by the employee himself and there is no threat or coercion in the process.

Andhra Sugars Ltd. v. Labour Court, Guntur. LLJ III 2008 P. 709 (Andhra Pradesh H.C.)

In the absence of original resignation, reference of dispute for adjudication is proper.

M/s. Chaubisi Plastic Pvt. Ltd. vs. Deputy Labour Commissioner, Lucknow and Others. 2009 LLR 266 (Allahabad H.C.)

When workman after resignation, started absents, and making efforts to setup his business, can not be termed as termination.

Gajuddin Akbar Shaikh vs. Nisaka Engineering (P) Ltd. & Anr. 2009 LLR 208 (Bombay H.C.)

After accepting payments voluntarily, plea of resignation under duress will not sustain.

Deepak Kumar Bali vs. HMT Limited. 2009 LLR 427 (Delhi H.C.)

Courts can't compel an employer to accept the

IMPORTANT LABOUR JUDGMENTS 2009

resignation of an employee pending disciplinary proceedings.

A.K. Arora vs. National Building Construction Corporation Ltd. 2009 LLR 588 (Delhi H.C.)

A resignation, whether on harassment or not constitutes a dispute under I.D. Act.

Managing Director, Adarsh Film Institute, Bangalore vs. Smt. M.K. Sharada and Another. 2009 LLR 636 (Karnataka H.C.)

A dispute between the employer and employee in connection with the employee's resignation is an industrial dispute.

Managing Director, Adarsh Film Institute, Bangalore v. Smt. M.K. Sharada & Anr. FLR (121) 2009 P. 465 (Karnataka H.C.)

When resignation alleged to have been obtained under duress, workman should have lodged protest immediately. Delay goes in favour of employer.

G.C. Day vs. Management of M/s Eureka Forbes Ltd. & Anr. 2009 III CLR 67 (Delhi H.C.)

When resignation is held on facts to be voluntary, its acceptance by the management will not be open to challenge.

Deepak Kumar Bali vs. HMT Ltd. LLJ III 2009 P. 27 (Delhi H.C.)

Obtaining resignation by force, can not be believed, unless, proved by workman substantially.

Pramod Kumar vs. General Export Agencies & Ors. 2009 LLR 1034 (Delhi H.C.)

Conditional resignation becomes operative after the legitimate conditions are complied with.

Devidayal Stainless Steel India Pvt. Ltd. vs. Ratnamma S. Panikar. CLR II 2009 P. 901 (Bombay H.C.)

When settlement is signed before conciliation officer, workman can't claim that he did not resign but signed the blank paper only.

Pramod Kumar vs. General Export Agencies and Ors. 2009 LLR 1089 (Delhi H.C.)

When employee relieved after 3.5 months on tendering his resignation, allegation of obtaining resignation under coercion will not be acceptable.

G.C. Day vs. Management of M/s Dureka Forbes Ltd. & Anr. 2009 LLR 1146 (Delhi H.C.)

Conditional resignation will not operative unless condition is satisfied. In such case employer-employee relationship continues.

Devidayal Stainless Steel India Pvt. Ltd. vs. Ratnamma S. Panikar. 2009 LLR 1215 (Bombay H.C.)

When employee resigned in her own handwriting, can't termed as the illegal termination.

Integrated Child Development Service Officer (ICDS Scheme) vs. Hemangniben Bakulbhai Vyas. 2009 LLR 1184 (Gujarat H.C.)

REINSTATEMENT

When a retrenched workman was directed, by an interim order, to be reinstated, the retrenchment compensation as already paid to him would be adjusted against retiral benefits.

U.P. State Road Transport Corporation, Agra vs. Sri Ram Lal and Another. 2008 LLR 1254 (Allahabad H.C.)

No reinstatement to Daily Wage driver, engaged without employment exchange.

Meham Co-operative Sugar Mills Ltd. vs. Presiding Officer and Anr. 2009 LLR 89 (Punjab & Haryana H.C.)

No Reinstatement to Daily Wages security guard.

District Manager, Haryana Agro-Industries Corporation Ltd. Kaithal and Another vs. Workman Bhira Ram and Another. 2009 LLR 102 (Punjab & Haryana H.C.)

Reinstatement is wrong for an employee who obtained employment on false information.

Management of Bharatiya Reserve Bank Not Mudran Ltd., Mysore vs. P. Shanmuga Prabhu. 2009 LLR 162 (Karnataka H.C.)

On reinstatement, workman is entitled to get prevalent rate of wages being paid to other workmen.

V. Ponnasam vs. Tamil Nadu Co-operative Sugar Federation Ltd. 2009 LLR 329 (Madras H.C.)

No reinstatement when worker failed prove of his working of 240 days.

Assistant Provident Fund Commissioner, Rohtak vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi and Anr. 2009 LLR 425 (Punjab & Haryana H.C.)

Reinstatement proper when termination made in violation of sec. 25N of I.D. Act.

Rajasthan State Road Transport Corporation, Kota vs. Surendra Kumar Bagri and Another. 2009 LLR 410 (Rajasthan H.C.)

No reinstatement for guilty of habitual absence.

Kannam Nageswara Rao vs. Rashtriya Ispat Nigam Limited, Visakhapatnam & Ors. 2009 LLR 491 (Andhra Pradesh H.C.)

Once the reinstatement is stayed, workman should not be deprived of interim relief.

Oil and Natural Gas Corporation Ltd. vs. Ninan Thomas. 2009 LLR 546 (Bombay H.C.)

When relationship between employer and employee is not cordial, compensation in lieu of reinstatement would

IMPORTANT LABOUR JUDGMENTS 2009

be proper.

Babu Ram Sagar vs. Presiding Officer, Labour Court-VII, Delhi & Anr. 2009 LLR 463 (Delhi H.C.)

Reinstatement need not invariably be the relief. Compensation of 1.5 lakhs proper in lieu of reinstatement.

Sushil Kumar vs. University of Delhi. 2009 LLR 472 (Delhi H.C.)

Reinstatement rightly denied when employee was gainfully employed and refused to work any where.

Sh. Mahavir Singh vs. M/s. Narang International Hotel (P) Ltd. 2009 LLR 501 (Delhi H.C.)

Reinstatement justified where employee was charged of theft (taken away 30 big soup spoons in his shoe), as it was unbelievable.

Ashok Kumar Sharma vs. Oberoi Flight Services. 2009 LLR 660 (Delhi H.C.)

No reinstatement to a workman terminated due to long absence. Compensation will suffice.

Sri G.M. Kempanna vs. Management of S.S.B. Industries Ltd; (known as Alstom Industries Ltd.) 2009 LLR 593 (Karnataka H.C.)

No reinstatement of apprentice terminated after completion of training.

2009 LLR 670 (Madras H.C.)

When enquiry set aside due to technical reasons, compensation in lieu of reinstatement would be appropriate.

Rajasthan State Road Transport Corporation vs. Raj Singh and Others. 2009 LLR 622 (Raj. H.C.)

Reinstatement improper when workman failed to prove his 240 days working in a year.

U.P. State Electricity Board, Lucknow vs. Ramvir Singh and Others. 2009 LLR 765 (Allahabad H.C.)

When employer failed to rebut 240 days working by workman by producing muster roll, reinstatement proper.

U.P. Rajkiya Nirman Nigam Ltd. vs. Ram Kumar Shukla and Anr. 2009 LLR 766 (Allahabad H.C.)

Reinstatement with back wages not justified when workman habitually absented and neglected his duties.

Smt. Gulzar Yaseen and Another vs. Presiding Officer, Labour Court, Rampur and Another. 2009 LLR 769 (Allahabad H.C.)

Reinstatement to daily wager not proper when he could not prove his working of 240 days.

State of Maharashtra through Sub-Divisional Engineer, Chandrapur vs. Ratan Budha Alam, Chandrapur. 2009 LLR 791 (Bombay H.C.)

Reinstatement in case of long gap between termination and

award will only add to unrest rather than industrial peace.

One time lumpsum compensation justified.

Rajesh Wire Industries (M/s) vs. Shri Umesh & Anr. 2009 LLR 693 (Delhi H.C.)

Reinstatement improper for guilty of absence for more than 4 years.

A.S. Anandhrayan Samuel vs. Dena Bank, Mumbai. 2009 LLR 709 (Karnataka H.C.)

Daily wager engaged without following rules, not entitled to reinstatement but can be paid compensation.

Divisional Forest Officer, (S.F.P.), Hisar vs. Bharat Singh @ Bharta and Another. 2009 LLR 771 (Punjab & Haryana H.C.)

No reinstatement of workman when employer complied with the provisions of retrenchment under I.D. Act.

Assistant Project Engineer, Ganga Pollution Control Unit U.P. Jal Nigam, Mirzapur vs. Presiding Officer, Labour Court, Varanasi and Another. 2009 LLR 900 (Allahabad H.C.)

When reinstated workman is not allowed to join, he will be entitled to last drawn wages.

Oil & Natural Gas Corporation Ltd. vs. Ninan Thomas. 2009 LLR 940 (Bombay H.C.)

No reinstatement of driver found guilty of unauthorised absence that too after holding enquiry.

Divisional Controller, G.S.R.T.C. vs. N.K. Makwana. 2009 LLR 921 (Gujarat H.C.)

Theft is serious misconduct. No reinstatement of such person found guilty of stealing 10 ltr. paint.

M/s Mangalam Timber Products Ltd. vs. Sailesh Kumar Gantayat. 2009 LLR 848 (Orissa H.C.)

No reinstatement of bus conductor found guilty of misappropriating ticket fare amount.

Madan Lal vs. Presiding Officer-cum-Labour Court & Ors. 2009 LLR 865 (Punjab & Haryana H.C.)

When approval for dismissal declined by court, will result into automatic reinstatement with last drawn pay.

Karan Singh vs. Authorised Disciplinary Authority, R.S.R.T.C. and Another. 2009 LLR 917 (Rajasthan H.C.)

Reinstatement proper, when driver was not negligent in driving the bus.

U.P. State Road Transport Corporation vs. State of U.P. and Others. 2009 LLR 1029 (Allahabad H.C.)

When there is trust deficit between employer and employee, compensation instead of reinstatement would be proper.

Mohd. Shakir vs. Sunder Lal Jain Hospital. 2009 LLR 1035 (Delhi H.C.)

When terminated for frequent absenteeism, lump sum

IMPORTANT LABOUR JUDGMENTS 2009

compensation granted instead of reinstatement and back wages.

Maruti Bhanudas Kamble vs. Bajaj Auto Ltd., Pune & Anr. 2009 LLR 1074 (Bombay H.C.)

In the absence of enough proof of voluntary abandonment, compensation in lieu of reinstatement would be proper.

K.M. Industries v. Karan Kumar. 2009 LLR 1068 (Delhi H.C.)

Ex-parte award can't be set aside merely on the plea of ordinary sickness. Reinstatement would be fatal to either party as both would function with mistrust hence compensation will do justice.

M/s. Bajrang Security Services vs. B.S. Chauhan & Anr. 2009 LLR 1129 (Delhi H.C.)

No reinstatement of driver when caused accident by flouting traffic rules and concealed the fact of accident.

Management of Tamil Nadu State Transport Corporation (Kumbakonam Division-II) Ltd., (rep. by its Managing Director) (formerly known as Dheeran Chinnamalai Transport Corporation Ltd.), Tiruchirapalli vs. Presiding Officer, Labour Court, Tiruchirapalli & Anr. 2009 LLR 1138 (Madras H.C.)

Reinstatement with stoppage of one increment proper in case of absence without leave.

Haryana State Federation of Consumers' Co-operative Wholesale Stores Ltd. and Ors. vs. Presiding Officer, Labour Court-cum-Industrial Tribunal, Hisar and Anr. 2009 LLR 1267 (Punjab & Haryana H.C.)

RETRENCHMENT

Merely workmen were asked to collect dues, is not sufficient for compliance of Sec. 25(F) of I.D. Act.

Muzaffarpur Regional Development Authority and Others vs. Jagannath Jha and Others. 2009 LLR 53 (Patna H.C.)

Termination of a workman working for 18 years with notional breaks without retrenchment compensation would be illegal.

Pritam Singh vs. Cancer Hospital & Research Institute, Gwalior & Anr. 2009 LLR 275 (Madhya Pradesh H.C.)

For a casual workman, not appointed through employment exchange, compliance of Sec. 25F of I.D. act not required.

Executive Engineer & Anr. vs. Presiding Officer, Labour Court & Anr. 2009 LLR 179 (Punjab & Haryana H.C.)

Even if the defect in termination is non compliance of retrenchment provisions, not reinstatement but consolidated compensation would be proper relief.

U.P. State Electricity Board, Ghazipur vs. Presiding Officer, Labour Court, Varanasi and Others. 2009 LLR 442 (Allahabad

H.C.)

When the appointment is conditional and employee fails to qualify, such termination will not be retrenchment.

Manjulaben Kalabhai Zinzuwadiya vs. Gujarat Water Supply & Sewerage Board. 2009 LLR 406 (Gujarat H.C.)

Denial of resumption of duty after sickness of an employee, by the employer, will be construed as retrenchment and not abandonment.

Bhagwati Lal Sharma vs. Judge, Labour Court, Bharatpur & Ors. 2009 LLR 418 (Rajasthan H.C.)

Even if 240 days working is completed will not be retrenchment in case of fixed period appointment.

Management of Mangalore Chemicals & Fertilizers Ltd. vs. Bhujanga & Ors. 2009 LLR 732 (Karnataka H.C.)

Termination of services of employees continuously working for ten years on a project which is not proved to have come to an end amounts to retrenchment.

M.P. Urja Vikas Nigam Ltd. v. Santosh Kumar Dubey. 2009 FLR (121) P. 509 (Madhya Pradesh H.C.)

To declare termination as illegal retrenchment, establishing 240 days of working prior to retrenchment is mandatory.

Management of Food Corporation of India vs. Union of India and Another. 2009 LLR 773 (Patna H.C.)

Termination of the services of a temporary employee for specified period does not amount to illegal retrenchment.

Nilesh M. Mahadeshwar vs. Presiding Officer, Central Government Industrial Tribunal, Mumbai & Anr. CLR II 2009 P. 381 (Bombay H.C.)

No re-employment when no violation of sec. 25 G of I.D. Act.

Chanabhai Muljibhai and Others vs. Gujarat Housing Board. 2009 LLR 841 (Gujarat H.C.)

Non-renewal of contract of employment of a workman engaged for specified period will not be retrenchment.

Hyderabad Industries Ltd., Deoghar vs. State of Jharkhand and Another. 2009 LLR 903 (Jharkhand H.C.)

Number of days of work put in by a workman in broken periods cannot be taken as a continuous service for the purpose of S.25-F.

Rambhai Ranabhai Savdharia v. Range Forest Officer. 2009 II CLR 608 (Gujarat H.C.)

While dismissing for misconduct, compliance under Sec. 25(F) of ID Act not required.

Workmen, Represented by President of Bihar Engineering Kamgar Union vs. Presiding Officer, Labour Court, Dhanbad and Another. 2009 LLR 996 (Jharkhand H.C.)

IMPORTANT LABOUR JUDGMENTS 2009

Even when the retrenchment is the illegal, it would not result into automatic reinstatement with back wages.

S. Narayana Rao S/o Rama Rao vs. K.C.P.S.I.C. Limited, Lakshmipuram, Chellapalli, rep. by its Managing Director, Chennai & Anr. 2009 LLR 1100 (Andhra Pradesh H.C.)

Termination of daily wager without complying provisions of sec. 25F of ID Act would be illegal.

District Health Officer vs. Salimbhai Osmanbhai C/o vasant J. Mamnani. 2009 LLR 1114 (Gujarat H.C.)

When appointment is made for fixed-term and not renewed, such termination will not be retrenchment.

Sh. Ram Kishan & Anr. vs. The Management of M/s. American Express Banking Corpn. & Anr. 2009 LLR 1174 (Delhi H.C.)

Provisions of S.25-F of the Act has no application to the contractual workmen.

Management of Audco India Ltd. vs. Presiding Officer, Principal Labour Court. CLR II 2009 P. 69 (Madras H.C.)

Reinstatement without back-wages will be proper when retrenchment was illegal.

University of Rajasthan and Another vs. Gopal Sharan Gupta. 2009 LLR 1187 (Rajasthan H.C.)

SETTLEMENT

Any agreement entered into by the management with the workman must be registered with the labour department to acquire legal status.

U.P. State Road Transport Corporation through its Dy. G.M., Eastern Zone, Varanasi vs. State of U.P. through the Collector, Azamgarh and Others. 2008 LLR 1266 (Allahabad H.C.)

Settlement with regd. representative Union can not be challenged by other Union.

Sarva Shramik Sanghatana & Ors. v. Bombay Dyeing & Manufacturing Co. Ltd. & Ors. CLR III 2008 P. 564 (Bombay H.C.)

Settlement prevails over the individual employee contract.

Management of Ambanad Estate vs. General Secretary, Kerala and Anr. 2009 LLR 309 (Kerala H.C.)

If settlement is arrived at pending adjudication, tribunal has to pass an award accordingly.

Kanti Pottery Karamachari Sangh vs. Associated Cement Companies Ltd. & Others. 2009 LLR 323 (Madhya Pradesh H.C.)

If settlement is signed by majority of union members and also upheld to the fair and reasonable, it is binding on the management and all union members.

First Flight Couriers Ltd., Bangalore vs. Karnataka Couriers, Cargo & Genl. Employees Union, Bangalore & Anr. 2009 LLR

375 (Karnataka H.C.)

Settlement under ID Act has greater sanctity and becomes a part of service conditions and contract of employment.

The Custodian, Shree Sitaram Sugar Company Ltd. vs. State of U.P. and Ors. 2009 LLR 1094 (Allahabad H.C.)

Award has to be interpreted keeping in view earlier settlement so that existing benefits are not adversely affected.

Biddle Sawyer Ltd. vs. Chemical Employees' Union. 2009 LLR 1163 (Bombay H.C.)

When workmen union challenged the individual settlement of workers through writ in HC, it is held that union should have raised industrial dispute under ID Act at a proper forum and not to approach HC.

M/s. Suraj Industries Limited vs. Ravi Dutt and Others. 2009 LLR 1246 (Himachal Pradesh H.C.)

STANDING ORDERS

When employment standing orders act is applicable, disciplinary action under any other rules would be nullified.

K. Suri Babu and Another vs. Nuclear Fuel Complex, Hyderabad and Others. 2009 LLR 332 (Andhra Pradesh H.C.)

H.O. covered under shop act will not be an establishment under industrial employment (S.O.) act.

Commonwealth Trust India Ltd. vs. Labour Commissioner. 2009 LLR 293 (Kerala H.C.)

60 years of age for retirement as per model standing order would apply where no other age of retirement is determined under agreement, or award.

Ammunition Factory Co-operative Credit Society Ltd. vs. adrinarayan R. Sharma and Another. 2009 LLR 756 (Bombay H.C.)

SUSPENSION

Court can't direct employer to provide work to suspended employee during enquiry proceedings.

Aparup Kumar Chatterjee vs. Gharat Coking Coal Ltd. and Others. 2008 LLR 1278 (Jharkhand H.C.)

Suspension allowance to be paid in full when made by incompetent person.

Municipal Corporation of Greater Mumbai and Others vs. Prakash Sridhar Mondkar. 2009 LLR 623 (Bombay H.C.)

Non-payment of subsistence allowance does not necessarily cause prejudice to the employee unless he establishes prejudice.

A.V. Anthony Swamy v. Management of Saint John's Medical College, Bangalore. 2009 (1) LLN 680 (Karnataka H.C.)

IMPORTANT LABOUR JUDGMENTS 2009

STRIKE

Employer is entitled to police protection in case of worker strike and obstruction.

M/s. Avtec Limited, Power Products Division Poonapally, Hosur vs. Superintendent of Police, Krishnagiri District and Others. 2009 LLR 62 (Madras H.C.)

Dismissal justified for strike in hospital.

Bangalore Hospital vs. Workman of Bangalore Hospital. 2009 LLR 173 (Karnataka H.C.)

Police & Adm. is bound to give protection to employer from workers obstructing and preventing men & material.

Panjab National Bank vs. State of Bihar & Others. 2009 LLR 137 (Patna H.C.)

When all employees participated in agitation, different types of punishment to employees not justified.

Kaushal Kishore Chaturvedi vs. U.P. State Road Transport Corporation and Others. 2009 LLR 723 (Allahabad H.C.)

SEXUAL HARASSMENT

Every employer is bound to constitute a Complaint Committee to enquire into the charges of sexual harassment.

Arati Durgaram Gavandi v. Managing Director, Tata Metaliks Ltd. & Ors. 2008 III CLR 764 (Bombay H.C.)

No reinstatement of a workman found guilty of sexual harassment at workplace.

Management of Tata Tea Ltd. vs. Presiding Officer, Labour Court, Coimbatore and Anr. 2009 LLR 645 (Madras H.C.)

Punishment other than dismissal will only show misplaced sympathy with the employee guilty of sexually harassing female officer.

Sunil Kumar vs. Delhi Development Authority. 2009 (122) FLR 417 (Delhi H.C.)

TERMINATION

Even the contractual employee can not be terminated with following disciplinary procedure if misconduct allegations are levelled against him.

G. Vnekat Rao v. Depot Manager, A.P.S.R.T.C., Visakhapatnam Depot, Visakhapatnam and Anr. 2008 III CLR 921 (Andhra Pradesh H.C.)

When employer did not terminate the service and asked worker to report for duty, worker cannot claim any relief.

M/s NRK House vs. Mr. P.V. Tommy & Anr. 2009 LLR 2 (Bombay H.C.)

Termination before fixed period illegal, when allegation of loss of confidence not supported by material.

Avineshwar Sawhney vs. J.K. Industries Ltd. 2009 LLR 110

(Delhi H.C.)

If charges are levelled against contractual employee, straight away termination with out inquiry would be illegal.

G. Venkat Rao vs. Depot Manager, A.P.S.R.T.C., Visakhapatnam Depot, Visakhapatnam and Anr. 2009 LLR 152 (Andhra Pradesh H.C.)

Termination without holding proper enquiry would be illegal, no matter if successive show cause notice were issued.

K. Madhusudan vs. Chairman/Person Incharge, A.P. State Handloom weavers Co-Operative Society Ltd., Hyderabad and Others. 2009 LLR 332 (Andhra Pradesh H.C.)

Termination even without providing explanation time to employee would be illegal.

G. Venkat Rao vs. Depot Manager, A.P.S.R.T.C., Visakhapatnam and Another. 2009 LLR 445 (Andhra Pradesh H.C.)

Termination justified for misappropriation.

Mohanbhai Ramjibhai Kateshia vs. Gujarat State Fertilizer Co. Ltd. 2009 LLR 446 (Gujarat H.C.)

Compensation in lieu of reinstatement proper when termination found illegal and his post was filled up.

Oriental Insurance Co. Ltd., Jammu vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and Anr. 2009 LLR 650 (Punjab & Haryana H.C.)

Termination of services of the workman for overstaying for 10 days of his sanctioned leave will be illegal and liable to be set aside moreso when no enquiry was held.

The Management of M/s Escorts Ltd, Faridabad vs. Kesar Chand & Anr. 2009 LLR 678 (Punjab & Haryana H.C.)

No notice required when termination is in accordance with condition of appointment.

Nilesh M. Mahadeshwar vs. Presiding Officer, Central Government Industrial Tribunal No. 1, Mumbai and Another. 2009 LLR 697 (Bombay H.C.)

Termination illegal for filing nomination to contest election.

Manor Investment Company Ltd. vs. Haribhai Dahyabhai Patel. 2009 LLR 1050 (Gujarat H.C.)

When Daily wages typist is not an employee under Sec. 2(5) of Raj. Shops Act his complaint of illegal termination cannot be entertained by the Authority.

Rajasthan State Co-operative Housing Federation Ltd. vs. Prescribed Authority & Anr. 2009 III CLR 214 (Rajasthan H.C.)

Termination of bus conductor guilty of habitual absence would be proper.

Harbhajan vs. Delhi Transport Corporation. 2009 LLR 1142 (Delhi H.C.)

IMPORTANT LABOUR JUDGMENTS 2009

Compensation and not reinstatement would be proper in case of illegal termination.

Rajinder Singh S/o Shri Sube Singh, Panipat vs. Presiding Officer, Labour Court, Ambala & Ors. 2009 LLR 1116 (Punjab & Haryana H.C.)

Termination of workman on the plea of loss of confidence on the following day of registering the workers union would be illegal and reinstatement justify.

M/s Kegg Farms (Pvt.) Ltd., through its Manager Maj. N.K. Gadeock (Retd.) vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon & Anr. 2009 LLR 1141 (Punjab & Haryana H.C.)

In case of termination on the ground forged educational certificate, no enquiry is necessary.

Chairman-cum-Managing Director, SECL and Others vs. Naval Kishore Mishra and Another. 2009 LLR 1260 (Chattisgarh H.C.)

When termination of manager effected in terms of appointment clause, no damages can be awarded against employer.

A.N. Shukul vs. Philips India & Ors. 2009 LLR 1179 (Delhi H.C.)

TRADE UNION

Election of office bearers of Trade Union can't be challenged in High Court through writ.

K.V. Sridharan & Ors. v. S. Sundamoorthy & Anr. 2009 I CLR 176 (Madras H.C.)

On declaration of Union Office bearers as protected workman by conciliation officer, employer cannot question the election of trade union.

DHL Worldwide Express (India) Pvt. Ltd. (Now known as DHL Express (India) Pvt. Ltd.) vs. AFL-DHL Employees Union and Anr. 2009 LLR 187 (Bombay H.C.)

Trade union registrar can't cancel the union registration under sec. 10 of T.U. Act.

R.G. D'souza vs. Poona Employees Union Through its President & Ors. 2009 I CLR 1053 (Bombay H.C.)

Dispute related to election of trade union can't be challenged in a writ petition.

K.V. Sridharan and Others vs. S. Sundamoorthy and Another. 2009 LLR 414 (Madras H.C.)

Membership of the Trade Union cannot be proved merely on the basis of Affidavit.

Force Motors Ltd. vs. Poona Employees' Union and Others. 2009 LLR 699 (Bombay H.C.)

Trade Unions have no right to hoist flags in the property premises of the Management.

Kerafibertex International (P) Ltd. vs. Kerafibertex Employees Association & Anr. 2009 LLR 985 (Kerala H.C.)

TRANSFER

APSRTC should have a uniform and transparent transfer policy.

P.S. Reddy and Others vs. Andhra Pradesh Road Transport Corporation, Hyderabad and Others. 2009 LLR 261 (Andhra Pradesh H.C.)

Transfer order can be challenged only at the place where employee works and not where H.O. of the company is situated.

Glaxo Smith Kline Pharmaceuticals Ltd. vs. Abhay Raj Jain & Anr. 2009 LLR 331 (Bombay H.C.)

Transfer of low grade employees (union office bearers) to a far off place immediately after agitation will not be legal. Employer to prove justifiability.

T. Jayapandi vs. State Express Transport Corporation Ltd. (through its M.D.), Chennai & Ors. 2009 LLR 447 (Madras H.C.)

Transfer order can be challenged from the point where it was generated.

Torrent Pharmaceuticals Ltd. vs. Member, Industrial Court, Chandrapur & Anr. 2009 LLR 456 (Bombay H.C.)

In the absence of specific term of transfer either in appointment letter or in standing orders, transfer would be illegal.

Tobu Enterprises Limited vs. Presiding Officer, Industrial Tribunal & Ors. 2009 LLR 475 (Delhi H.C.)

Where employee was first stopped orally and there after transferred on raising industrial dispute, such transfer would be malafide and reinstatement held proper.

Management of Vijayashree Spinning Mills Ltd., Dindigul rep. by Its Director vs. P.O. Labour Court, Trichirappalli & Anr. 2009 LLR 648 (Madras H.C.)

Transfer of a sales representative though discharging duties of clerical nature to a far off place with language problem would be improper and reinstatement rightly awarded.

Management of Holy Faith International Pvt. Ltd., Chennai vs. Presiding Officer, I-Addl. Labour Court, Chennai. 2009 LLR 673 (Madras H.C.)

Transfer when stayed and continued for 18 years, liable to be quashed.

Ram Bodh Misra vs. Superintending Engineer, Vidyut Vitran Mandal, Sultanpur and Others. 2009 LLR 1004 (Allahabad H.C.)

When transfer on establishment takes place, both

IMPORTANT LABOUR JUDGMENTS 2009

transferor and transferee will be jointly liable for ESI contribution.

E.S.I. Corporation vs. Mohanachandran Nair. 2009 LLR 1276 (Kerala H.C.)

WORKMAN

Person doing managerial function is not a workman.

Twenty First Century Printers Ltd. Mumbai v. K.P. Abraham & Anr. CLR III 2008 P. 616 (Bombay H.C.)

A workman cannot be deprived of his wages when an award for reinstatement is stayed.

Oil & Natural Gas Corporation Ltd. Mumbai v. Ninan Thomas. CLR I 2009, P. 279 (Bombay H.C.)

A director or manager if not having administrative powers, will be workman under I.D. Act.

M/s. V.L.T. Cargo Movers Pvt. Ltd. vs. Shri Ajitkumar S. Puri and Another. 2008 LLR 1236 (Bombay H.C.)

Workman has to prove 240 days of working by cogent evidence.

Sub-Divisional Engineer, Irrigation Project, Yavatmal vs. Sarang Marotrao Gurnule and Others. 2009 LLR 322 (Bombay H.C.)

Driver of manager of bank, getting salary from him will not be workman under I.D. Act.

Dilip Singh vs. Union Bank of India. 2009 LLR 321 (Rajasthan H.C.)

Assistant purchase officer having power to assess and verify the work of subordinate will not be workman under I.D. Act.

Vijay Dattatraya Kale vs. Peico Electronics & Electricals Ltd., Pune and Anr. 2009 LLR 509 (Bombay H.C.)

A deemed permanent workman for all purposes is a permanent workman.

Indian Smelting and Refining Co. Ltd. vs. Sarva Shramik Sangh. 2009 LLR 680 (Bombay H.C.)

Store supervisor, supervising work of others and sanctioning leave of his juniors will not be a workman under I.D. Act.

Sunil Dutt Bakshi vs. M/s Dabur India Limited and Anr. 2009 LLR 727 (Himachal Pradesh H.C.)

When action was taken under standing orders by treating him as workman, management can't take stand before court that he was not a workman under I.D. Act.

M. Ganesan vs. Management of Tamil Nadu Electricity Board, Chennai and Anr. 2009 LLR 816 (Madras H.C.)

Engineer not performing purely managerial functions will be workman under I.D. Act.

State of Haryana and Others vs. S.D. Dubey. 2009 III CLR

65 (Delhi H.C.)

Physical Education Teacher will not be a workman.

Amar Jyoti School vs. Government of National Capital Territory of Delhi and Others. 2009 LLR 957 (Delhi H.C.)

When officer is permitting extra distribution of work, recommending leaves, will not be workman under ID Act.

Bishwa Ram Ojha vs. Management of M/s. Tata Iron & Steel Company Ltd. 2009 LLR 1042 (Jharkhand H.C.)

Dy. Mining Engineer will not be a workman under ID Act.

State of Haryana and Others vs. S.D. Dubey. 2009 LLR 1148 (Delhi H.C.)

Manager of a bank will not be workman under WC Act hence not entitled to compensation.

Regional Manager, Punjab National Bank & Anr. vs. Paramjeet Kaur (Smt.). 2009 LLR 1117 (Rajasthan H.C.)

Employee performing purely managerial or administrative functions is not a 'workman'.

State of Haryana & Ors. vs. S.D. Dubey. CLR III 2009 P. 65 (Delhi H.C.)

W.C. ACT

Principal employer is under obligation to state wages of the deceased workman for calculation of compensation.

Superintending Engineer, Tiruchirappalli and Another vs. C. Jothi and Others. 2008 LLR 1241 (Madras H.C.)

When the Insurance Company has undertaken to pay the compensation under the policy covering third party risk, it cannot wriggle out the liability for payment of compensation and the 12% interest.

New India Assurance Company Ltd., Jamshedpur vs. Mohan Singh and Another. 2008 LLR 1256 (Jharkhand H.C.)

W.C. Commissioner is entitled to ask for any documents, necessary for disposal of petition.

M/s. Ruby International Annapurna Metal, Peetal Basti, Moradabad and Other vs. Devendra Singh. 2009 LLR 107 (Allahabad H.C.)

No compensation to Chowkidar, died after pain, since his job was not of strenuous nature.

Pushpaben Natverial Darji & Ors. vs. Nila Borav Engineering Ltd. & 3 Ors. 2009 LLR 95 (Gujarat H.C.)

Even if payment was made by consignor to loader, employer is liable for compensation in case of loader death.

United India Insurance Company Ltd., Hubli vs. Shivabasavva and Others. 2009 LLR 40 (Karnataka H.C.)

It is for employer to prove that he has no connection with the employment of the deceased to escape liability

IMPORTANT LABOUR JUDGMENTS 2009

for payment of compensation.

National Insurance Co. Ltd. vs. Lolakshi. 2009 LLR 287 (Kerala H.C.)

Commissioner has no powers to review its own judgment.

Raman Agnihotri vs. Commissioner, Workmen's Compensation, Kanpur and Others. 2009 LLR 443 (Allahabad H.C.)

When the vehicle was duly insured, insurance company and not the vehicle owner would be liable to pay compensation to deceased cleaner dependants.

Oriental Insurance Co. Ltd., Dharwad vs. Abraham Phillip Parsha (Deceased) by LRs. and Others. 2009 LLR 442 (Karnataka H.C.)

If policy does not cover contractor workers, employer is liable to pay compensation.

New India Assurance Co. Ltd. vs. Bhaskara, S/o Pachan, Thudathil Veedu & Anr. 2009 LLR 438 (Kerala H.C.)

When injuries have direct nexus to employment compensation award against employer would be justified. It is for employer to prove that it had no connection with the employment.

National Insurance Co. Ltd. vs. Lolakshi K. and Others. 2009 LLR 444 (Kerala H.C.)

When employee was not assigned the job of electrician, no compensation when died due to electrocution.

Pavayee & Anr. vs. Assistant Engineer, Operation & Maintenance Tamil Nadu Electricity Board, Manickampalayam & Ors. 2009 LLR 370 (Madras H.C.)

Compensation will be proper, when employee came out of his house allotted by employer and was attacked by wild elephant and died.

Manager, Valapara Estate, Valparai vs. (Smt.) Alamelu. 2009 LLR 441 (Madras H.C.)

Death of night watcher after one month of felling down from chair causing spinal cord injury, showing death due to respiratory failure will not be entitled to compensation.

Managing Director, M/s. Dey Construction Company vs. Jamuna Dei (Dukhi). 2009 LLR 390 (Orissa H.C.)

Insurer employer and not the insurance company will be liable to pay penalty on compensation.

United India Fire and General Insurance Co. Ltd., Chandigarh vs. Shingari Devi (Smt.) and Others. 2009 LLR 445 (Punjab & Haryana H.C.)

No claim for compensation after 12 year of accident will be maintainable.

Bhagwat Dnyandeo Ghule vs. Universal Luggage, Aristocrat.

2009 LLR 517 (Bombay H.C.)

Dependents entitled to compensation due to death during the course of employment even if attendance was not marked.

Bhavnagar Municipal Corporation vs. Bhanuben Maganbhai Havalia. 2009 LLR 550 (Gujarat H.C.)

Liability to pay compensation arises from the day of accident.

Harrisons Malayalam Ltd. vs. Ashraf. 2009 LLR 685 (Kerala H.C.)

Unless master and servant relationship is established no compensation can be awarded to injured person.

Oriental Insurance Co. Ltd. vs. Jaswinder Singh & Ors. 2009 LLR 778 (Punjab & Haryana H.C.)

Interest on compensation amount is the liability of insurer while the penalty is to be paid by principal employer.

M/s Muley Brother (P) Ltd. & Anr. vs. Sow. Samindarabai Karbhari Dandge & Ors. 2009 LLR 939 (Bombay H.C.)

Sustaining mental and physical strain, becoming sick due to hard work put in for repair of vehicle met with an accident on road, resulting in to death has direct nexus with the duty since he was driver cum mechanic went to bring back the stuck off vehicle and thus entitled to compensation.

Mysore Ammonias Supply Corporation vs. Kashiben Jashbhai Patel & Ors. 2009 LLR 854 (Gujarat H.C.)

Penalty for non payment of compensation would be borne by the employer and not insurance company.

National Insurance Company vs. Karnail Singh. 2009 LLR 835 (Himachal Pradesh H.C.)

Punishment of deprivation of promotion for two years justified when employee was found guilty of not adopting proper purchase procedure.

Gauri Shankar Singh vs. Chairman and Managing Director, N.T.P.C., New Delhi and Others. 2009 LLR 916 (Patna H.C.)

Driver met with an accident while driving tanker will be entitled to get compensation under W.C. Act.

New India Insurance Co. Ltd. vs. Nahar Singh & Ors. 2009 LLR 880 (Rajasthan H.C.)

Food allowance will be part of wages for calculating compensation under WC Act.

National Insurance Co. Ltd. vs. Sh. Prem Singh & Ors. 2009 LLR 1051 (Himachal Pradesh H.C.)

Doctor has to assess the injury for compensation and not commissioner.

Narayani vs. Managing Director, Coastal Packer (P) Ltd. and Anr. 2009 LLR 1052 (Madras H.C.)

Bank employee working in clerical capacity will not be

IMPORTANT LABOUR JUDGMENTS 2009

workman under WC Act.

Vijay Ramesh Barve & Ors., Pune vs. Bank of Maharashtra & Anr. 2009 LLR 1153 (Bombay H.C.)

When workman explained the cause of delay in giving notice under WC Act, commissioner should not have rejected the claim.

Jagannath Gupta vs. Awadh Ram and Another. 2009 LLR 1201 (Chhattisgarh H.C.)

MISCELLANEOUS

High Court acts only in a supervisory capacity and not as an appellate terminal under writ jurisdiction.

Amar Chand vs. Judge, Labour Court and Another. 2008 LLR 1238 (Rajasthan H.C.)

Labour Court is under obligation to frame all issues to adjudicate upon the reference and not only the preliminary issue.

Uday Janardhan Kulkarni vs. Geo-Chem Laboratories Pvt. Ltd. 2008 LLR 1246 (Bombay H.C.)

In the absence of publication of award in gazette, employer can't be prosecuted for non implementation.

Bharamarbar Das vs. State of Orissa and Others. 2008 LLR 1251 (Orissa H.C.)

Labour Court has to confine its power to the terms of reference only.

Birla Tyres Workers Union vs. Industrial Tribunal Orissa, Bhubaneswar and Others. 2008 LLR 1271 (Orissa H.C.)

No presumption of appointment, unless appointment letter is produced.

State of U.P. through Executive Engineer, Irrigation Division, Bareilly vs. Presiding Officer, Labour Court, Bareilly and Another. 2009 LLR 51 (Allahabad H.C.)

Mentioning as confirmed employees in wage slip will not give status of confirmed to a Trainee.

Shri Vijay Kumar vs. Presiding Judge, Labour Court and Another. 2009 LLR 68 (Himachal Pradesh H.C.)

No Question of facts can be decided in writ.

Larsen & Toubro Employees Association vs. State of Haryana & Others. 2009 LLR 106 (Punjab & Haryana H.C.)

Change in date of birth can't be accepted at fag end of career.

Kumar Pal Singh vs. Chief Managing Director, Lucknow and Others. 2009 LLR 263 (Allahabad H.C.)

Labour Court can't reject the claim of workman on the ground of limitation.

Union of India and Others vs. Sri Ram Misra and Another.

2009 LLR 277 (Allahabad H.C.)

An Ex-parte order of ten times compensation should reopened on cost.

Sharda Construction vs. Authority Under Minimum Wages Act, 1948 and Others. 2009 LLR 286 (Bombay H.C.)

School register indicating date of birth of a student has no probative value being private document.

Vasudha Gorakhnath Mandvilkar vs. City and Industrial Development Corporation of Maharashtra Ltd. 2009 LLR (Bombay H.C.)

In case of grave misconduct, court should be reluctant to interfere with the punishment.

Muljibhai Patel Urological Hospital vs. Arunaben I. Desai. 2009 LLR 289333 (Gujarat H.C.)

Prosecution of employer can be launched by any person authorised by Govt.

Prashant Swarup and Another vs. Union of India and Another. 2009 LLR 159 (Jharkhand H.C.)

High Court will not interfere with the powers of labour courts under section 11A.

P. Jayaraman vs. Bharat Heavy Electricals Ltd., Trichy and Ors. 2009 LLR 301 (Madras H.C.)

Decent balance needs to maintained while protecting the interest of employee on the one hand and employer on the other.

T. Gopal Rao vs. Andhra Bank, Head Office, Hyderabad and Others. 2009 LLR 443 (Andhra Pradesh H.C.)

Jurisdiction dispute can't be raised before High Court if not taken up at trial court stage.

Management of Horticulture/Forest Department, Govt. of NCT of Delhi vs. The presiding Officer & Anr. 2009 LLR 412 (Delhi H.C.)

No writ will lie against pending disciplinary proceedings.

Asrafkhan Alikhan Pathan vs. Divisional Controller. 2009 LLR 426 (Gujarat H.C.)

Dispute dismissed for default and not on merit will not attract res-judicata.

Venkataiah G. s/o Veera Swamy vs. Industrial Tribunal-cum-Labour Court, Warangal, Rep. by its P.O. and Anr. 2009 LLR 539 (Andhra Pradesh H.C.)

Re-employment cannot be claimed as a matter of right by the employees of the transferred unit.

M. Shashikumar & Ors. vs. Management of BPL Ltd., Bangalore & Anr. 2009 II CLR 261 (Karnataka H.C.)

In the absence of any manifest error or violation of

IMPORTANT LABOUR JUDGMENTS 2009

principles of natural justice in the judgment, High Court will not interfere with the labour court award.

Anand Prakash vs. Godrej Sara Lee Ltd. 2009 LLR 564 (Delhi H.C.)

Employer can't have the right to prescribe even the type of cloth employee should wear. Can't prevent employee from wearing uniform made khadi cloth.

S. Kasthuri vs. Chairman, Airports Authority of India/National Airports Division, New Delhi and Ors. 2009 LLR 629 (Madras H.C.)

Even though no limitation is provided to file writ against labour court award, public body like jal board can't be allowed to sleep over its rights for 4 years if aggrieved by award. Writ dismissed.

Delhi Jal Board vs. Its Workman (Sri Balbir Singh). 2009 LLR 801 (Delhi H.C.)

Dy. Labour Commissioner has no power to restrain employer from appointing new persons.

Bharat Heavy Electricals Ltd (BHEL) vs. State of U.P. & Ors. 2009 LLR 833 (Allahabad H.C.)

Ex-Parte award can only be set aside within 30 days of its publication.

Kalpana Industries, Indore vs. Kalpana Industries Seva Ayukta Shramikgan, Indore. 2009 LLR 882 (Madhya Pradesh H.C.)

Writ petition is not maintainable when alternate remedy is available.

Vatan Press 'Sudarma', Jaipur vs. Regional Provident Fund Commissioner & Ors. CLR II 2009 P. 490 (Rajasthan H.C.)

Sheer negligence of employer not to be tolerated in court matters in setting aside ex parte award.

Rajula Nagarpalika vs. Pankaj Kumar Pratapari Chauhan. 2009 LLR 982 (Gujarat H.C.)

When two persons charged with same misconducts, having same evidence and facts, disciplinary authority should award identical punishment to both.

P.M. Ratnakar vs. UCO Bank through its Regional General Manager. 2009 LLR 1164 (Bombay H.C.)

Having not able to prove that clause of the appointment letter was incorporated under duress, a suit claiming one crore towards damages alleging the terms of appointment letter against public policy and sec. 23 of the contract act, not tenable.

Y.K. Sethi vs. M/s. BASF India Ltd. and Ors. 2009 LLR 1127 (Delhi H.C.)

Quantum of wages and number of years of service should primarily be the factor to be considered by the labour court while deciding about compensation.

Paras (Sh.) vs. M/s. Lovely Ticket Wala. 2009 LLR 1132 (Delhi H.C.)

Last drawn salary means not only what is paid but also what is payable to employee.

Sampath A.M. vs. Bank of Baroda, Mumbai & Anr. LLJ III 2009 P. 555 (Madras H.C.)

© Business Manager - All Rights Reserved