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Important Labour Judgments of 2010

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2010 At a glance...

Important Labour Judgments



Supreme Court Said...

For applying the principle of equal pay for equal work, mere volume of work shall not be relevant, there being qualitative difference as regards the liability and responsibility.

Ajmer Vidyut Vitran Nigam vs. Naveen Kumar Saini 2010 (127) FLR 819

When termination is illegal, lump-sum amount of 2 lakh towards back wages would be proper with reinstatement in facts and circumstances of the case.

Faridan vs. State of Uttar Pradesh. 2010 LLR 87

When termination found illegal and labour court awarded reinstatement but without back wages, it would be proper to grant 50% of back wages instead of full.

M/s. Reetu Marbles vs. Prabhakant Shukla. 2010 LLR 93

Full back wages would be appropriate when reinstatement granted and rules provide for such back wages in case of illegal termination.

Jaipur Vidyut Vitran Nigam Ltd. & Ors. vs. Nathu Ram. 2010 LLR 97

When employee is absent for six months, and tender resignation but management removed him from services by not accepting his resignation, can't be held to be justified.

Chairman-Cum-Managing Director, Coal India Ltd. and Another vs. Mukul Kumar Choudhuri and Others. 2009 (123) FLR 601

Even when dismissal of a workman is set aside by the Court, Compensation in lieu of reinstatement will be appropriate.

Ashok Kumar Sharma vs. Oberoi Flight Services. 2009 LLR 1281

Termination of doctor for unauthorized absence would be illegal without holding enquiry.

C.N. Malla vs. State of Jammu and Kashmir and Others. 2009 LLR 1318

Enquiry Officer who is company's lawyer cannot be considered to be partial towards the management of the company.

Denial to permit the delinquent to engage a lawyer to defend himself does not necessarily amount to violation of principles of natural justice especially when the charges are specific and simple.

Biecco Lawrie Ltd. & Anr. vs. State of West Bengal & Anr. LLN(4) 2009 P. 91

When charges are different, acquittal in criminal case by court will not be a bar in departmental enquiry.

Bank of India and Another vs. Bhimsen Gochhayat. 2010 LLR 113

LABOUR Judgments



When workman did not work for considerable period 50% back wages will be justified on reinstatement.

Bharat Coking Coal Ltd. (through Management) vs. National Coal Workers Congress (through Vice President). 2010 LLR 115

Civil Courts have no jurisdiction to decide about the legality of transfer of an employee.

Apollo Tyres Ltd. vs. C.P. Sebastin. 2010 LLR 192

Right to receive gratuity under the Payment of Gratuity Act can't be negated by any contract between employer-employee.

Allahabad Bank & Anr. vs. All India Allahabad Bank Retired Emps. Assn. 2010 LLR 193

In the absence of any declaration by the appropriate Government, the fisheries industries cannot be held to be a seasonal industry.

Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Charda. CLR III 2009 P. 941

Inquiry invalid when documents relied upon, not supplied to delinquent employee. Reinstatement proper.

State of U.P. and others vs. Saroj Kumar Sinha. 2010 (124) FLR 857

No interference with the notification prohibiting contract labour in railway truck sleeper renewal work.

Baleshwar Rajbashi and Others vs. Board of Trustees for Port of Calcutta and Others. 2010 (124) FLR 241

Termination of a probationer during his extended period of probation, even when stigmatic would not be illegal.

Chaitanya Prakash & Anr. vs. H. Omkarappa. 2010 LLR 225

While interfering with the punishment by management, courts must give supporting reasons.

Uttar Pradesh State Road Transport Corporation vs. Nanhe Lal Kushwaha. 2010 LLR 230

Right Leg amputation of driver due to accident would be 100% earning capacity loss.

S. Suresh vs. Oriental Insurance Co. Ltd. and Another. 2010 LLR 250

In case of date of birth, municipality document will prevail over the school certificate.

CIDCO vs. Vasudha Gorakhnath Mandevlekar. 2010 LLR 338

Non-furnishing of enquiry report will not vitiate the punishment.

Sarv U.P. Gramin Bank vs. Manoj Kumar Sinha. 2010 LLR 348

Reinstatement with 50% wages appropriate when workman worked for 240 days and termination was illegal.

Ramesh Kumar vs. State of Haryana. 2010 LLR 390

Nomination to receive payments under different laws, indicated by workman doesn't confer any beneficial interest on nominee as benefits are to be distributed as per law of succession.

Shipra Sengupta vs. Mridul Sengupta and Others. 2010 LLR 447

Workers engaged by transport contractors for loading and unloading of milk can at dairy will not be employees of principal employer for ESI purpose.

Managing Director, Hassan Co-operative Milk Producer's Society Union Limited vs. Assistant Regional Director, Employees State Insurance Corporation. 2010 II CLR 223, 2010 LLR 510

In case of termination without retrenchment compensation, reinstatement with 50% back wages would be proper and HC order modifying the award to compensation only is liable to be set aside.

Krishan Singh vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Hr.) 2010 LLR 450

Labour Commissioner directions of paying equal wages to contractor workers without examining and considering the evidence of management would be illegal.

U.P. Rajya Vidyut Utpadan Board and Another vs. U.P. Vidyut Mazdoor Sangh. 2010 LLR 453

Dismissal of LIC development officer on the basis of an enquiry held in violation of principles of natural justice and prescribed procedures would be illegal.

L.I.C. of India & Anr. vs. Ram Pal Singh Bisen. 2010 LLR 494

When employer is financially weak, 50% instead of full back wages will be appropriate.

Manager, K.V.S.S. Mandwar and Another vs. Mukesh Kumar Sharma. 2010 LLR 568

When employer case was that he did not terminate the services and reinstated worker as directed by court, 50% instead of full back wages will be proper.

Malwa Vanaspati And Chemical Co. Ltd. vs. Rajendra. 2010 LLR 569

Sec. 25F of ID Act is mandatory in nature and full compliance is required for effecting retrenchment, otherwise retrenchment would be null and void.

Anoop Sharma vs. Executive Engineer, Public Health Division No. 1, Panipat (Hr.). 2010 LLR 627

LABOUR Judgments



No compensation will be payable when there is no nexus between the death and the accident-that too when the employee has died of heart attack.

Rashida Haroon Kupurade vs. Div. Manager, Oriental Ins. Co. Ltd & Ors. 2010 LLR 633

For passing false bills, punishment of withholding three increments is proper.

Nantu Ranjan Paul vs. Steel Authority of India Ltd. & Ors. 2010 LLR 635

Workman can't be granted any relief by civil court being remedy available under ID Act.

R.S.R.T.C. & Ors. vs. Deen Dayal Sharma. 2010 LLR 673

Casuals even terminated illegally without paying retrenchment compensation will not be entitled to reinstatement with back wages. Compensation will meet the end of justice.

Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal and Ors. 2010 LLR 677

Mere appointment of enquiry officer while framing the charge sheet even before considering the reply of employee will not make disciplinary proceedings invalid.

South Bengal State Transport Corporation vs. Ashok Kumar Ghosh & Ors. 2010 LLR 723

Dismissal of bus conductor for receiving fare and not issuing tickets upheld.

U.P. State Road Transport Corporation vs. Suresh Chand Sharma. 2010 LLR 760

The Government is empowered to prohibit lock-out under section 10(3) of the Industrial Disputes Act.

Empire Industries Ltd. vs. State of Maharashtra and Ors. 2010-11 LLJ 593

No prior approval for dismissal by minority school required under Delhi School Education Act.

G. Vallikumari vs. Andhra Education Society and Others. 2010(125) FLR 1048

No regular pay scales for daily wagers.

Surendra Nath Pandey and Others vs. U.P. Co-Operative Bank Ltd. and Another. 2010 (125) FLR 1045

The question pertaining to payment of salary for the period when the employee was under suspension

depends upon the final order in disciplinary proceedings hence the impugned order of the Division Bench of High Court granting back-wages is liable to be set aside.

Kallakurichi Taluk Co-operative Housing Society Ltd. vs. M. Maria Soosai and Others. 2010 (126) FLR 96

Even after acquittal from the criminal court, dismissal not to be set aside of employee found guilty of dishonesty and misappropriation.

Sushil Kumar Singhal vs. The Regional Manager, Punjab National Bank. 2010 LLR 1025

Dismissal justified of bank manager found guilty of withdrawing huge amounts for fictitious persons.

The General Manager (P), Punjab & Sind Bank & Ors. vs. Daya Singh. 2010 LLR 1029

Special law about gratuity under working journalists and other newspaper employees Act 1955 will prevail over Payment of Gratuity Act 1972.

P. Rajan Sandhi vs. Union of India & Anr. 2010 III CLR 583

Compensation would be appropriate relief to daily wager, though worked for many years but could not prove working of 240 days in the year preceding termination.

Incharge Officer and Anr. vs. Shankar Shetty. 2010 LLR 1137

Bank management is under legal obligation to give copy of the enquiry report to employee with proposed punishment when service rules so provide.

Punjab National Bank & Ors. vs. K.K. Verma. 2010 LLR 1138

Functional disability is different from bodily disability arising out of accident. As a driver he may be 100% disable but otherwise his earning capacity is not lost. In such cases compensation to be assessed as in the case of permanent total disablement.

Palraj vs. The Divisional Controller, NEKRTC. 2010 LLR 1146

Insurance company can't be held liable for the death of workman not arising out of accident.

Mamtaj Bi Bapusab Nadaf & Ors. vs. United India Insurance Company & Ors. 2010 LLR 1200

Under the provisions of Industrial Employment (S.O.) Act and UP ID Act labour court and not the labour commissioner has jurisdiction to give decision on interpretation and application of the Standing Orders.

Triveni Engineering & Industries Ltd. vs. Jaswant Singh & Anr. 2010 LLR 1202



And High Courts Said...



APPRENTICE

State Government can fix wages even for apprentices.

The Southern India Mills' Association, etc. vs. The State of Tamil Nadu & Ors. 2010 Lab IC 1250 (Mad. HC)

Tribunal award of reinstatement in favour of apprentice would be illegal.

Kanpur Jal Sansthan vs. Presiding Officer, Industrial Tribunal & Anr. 2010 LLR 1232

An apprentice has no right to an appointment in service.

Amar Singh vs. H.P.S.E.B. 2010 LLR 1252 (HP HC)

Apprentice or trainee is not a workman under ID Act and his termination will not amount to retrenchment. Such termination will be covered by sec. 2(oo) (bb) of ID Act.

Executive Engineer, Haryana State Electricity Board and Anr. vs. Presiding Officer, Labour Court, Gurgaon and Ors. 2010 LLR 55 (Punjab & Haryana HC)

ABANDONMENT

Abandonment rightly presumed when dispute also raised after 4 years.

Arvindhbhai Harjibhai Makwana vs. Moti Kukavav Gram Panchayat. CLR III 2009 P. 514 (Guj. HC)

When signature of the workman on computerised sheets were not genuine, abandonment of job by him can't be rightly concluded.

Om Prakash S/o Jagdish Raj vs. Lamba Plastics. 2010 LLR 533 (Del. HC)

When workman submits his medical certificate about his sickness, voluntary abandonment can't be presumed by employer.

Scooter India Ltd. vs. Presiding Officer, Labour Court and Anr. 2010 LLR 700 (All. HC)

Bank employee governed by settlement, will be deemed to have voluntarily abandoned the service in case unauthorised absence and not responding to notices.

Jaswinder Singh vs. Regional Manager, Punjab National Bank, Karnal and Another. 2010 LLR 817 (Punjab & Haryana HC)

BACK WAGES

No question of back wages when employer offered for work and workman declined.

Kashinath Narayan Gharat, since deceased through L. Rs. Daya Kashinath Gharat & Ors. vs. Maharashtra State Electricity Distribution Company Ltd. & Anr. 2009 LLR 1283 (Bom. HC)

Conduct of the workman in not rejoining the company and subsequent closure of the company do not justify workman's reinstatement with grant of 75% back wages.

Manor Investment Company Ltd. vs. Haribhai Dahyabhai Patel. LLJ IV 2009 P. 89 (Guj. HC)

25% back-wages on reinstatement would be appropriate since the workman was a daily-rated and temporary muster roll employee.

Mahesh vs. Presiding Officer, Labour Court-III, Faridabad and Others. 2010 LLR 322 (Punjab & Haryana HC)

LABOUR Judgments



In case of early retirement, workman rightly awarded back wages compensation.

U.P.State Electricity Board and Another vs. Presiding Officer, Labour Court, Varanasi and Another. 2010(124) FLR 611 (All. HC)

Daily - wager not entitled to back wages since he was not engaged to work.

V.R. Bhojgowda vs. State of Karnataka and Ors. 2010 LLR 434 (Karn. HC)

In the absence of any evidence of not gainfully employed, back wages should not be granted by court.

Sri Ananth Awdhani vs. M/s. Sun Pharmaceuticals Industries Ltd. 2010 LLR 607 (Karn. HC)

Denial of back-wages by the Labour Court not justified hence the High Court awarded full back-wages less for the period of 11 months when the workman worked elsewhere.

Burhanuddin Sayyed Ali vs. Rank Controls & Instruments (Pvt.) Ltd. & Anr. 2010 LLR 857 (Bom. HC)

Reinstatement with 20% back wages will be wholly illegal when workman worked only for 145 days. Sec. 25F of ID Act not attracted.

Management, Vellore Co-operative Primary Agricultural and Rural Development Bank Ltd. and Ors. vs. Presiding Officer, Labour Court, Vellore & Ors. 2010 LLR 875 (Mad. HC)

In the absence of proof of non employment, workman will not get back wages.

Management of Coal Mines Area Development Authority, Dhanbad vs. Taj Khan. 2010 LLR 1238 (Jharkhand HC)

Mere statement of workman of unemployment during dispute period is not sufficient to grant full back wages.

Bihar Rajya Pul Nirman Nigam Ltd., Through its Managing Director vs. Presiding Officer, Labour Court, Patna and Anr. 2010 LLR 1242 (Patna HC)

Even in case of violation of S.25-F of the I.D. Act, it is not necessary that the entire back wages be granted.

Management of Tamil Nadu State Transport Corporation & Ors. v. Presiding Officer, Labour Court. LLN (3) 2010 P. 469 (Mad. HC)

A workman who has been ordered to be reinstated in service is entitled to back wages from the date on which he filed his affidavit that he was unemployed.

Management, K.S.B. Pumps Ltd. v. Presiding Officer, Labour Court. FLR (126) 2010 P. 758 (Mad. HC)

BUILDING & CONSTRUCTION WORKERS

It will be the liability of the contractor and not the principal employer to pay welfare cess in respect of workers working at site under building and other construction workers welfare cess Act 1996.

M/s. Gannon Dunkerley & Co. Ltd. vs. State of Madhya Pradesh and Others. 2010 LLR 184 (MP HC)

It will be the owner and not the contractor of this establishment who will be responsible to pay Cess under Building & Other Construction Workers (RE&CS) Act.

Adani Agri Logistics Limited and Another vs. The State of Haryana and Others. 2010 LLR 752 (Punjab & Haryana HC)

BONUS

Entitlement of payment of bonus can be examined by the authority in terms of mechanism provided u/s. 22 of the Bonus Act.

Subhash Chand & Ors. vs. Rajasthan Rajya Sahkari Tilhan Utpadak Sangh Ltd. CLR III 2009 P. 956 (Raj. HC)

A daily rated workman is entitled to get bonus.

Sumitra Devi vs. H.P.S.E.B. & Ors. LLJ I 2010 P. 199 (HP HC)

Bonus payment justified to workers when employer was unable to prove otherwise.

Shree Gajanana Industries, Goa vs. Workmen, represented by Mine Workers Union, Vasco-Da-Gama and Another. 2010 LLR 344 (Bom. HC)

Bonus is not payable on subsistence allowance.

Deccan Merchants Co-operative Bank vs. Avdhot Marutirao Rane & Anr. LLN I 2010 P. 160 (Bom. HC)

When payment of bonus Act is not applicable to Prasar Bharti, application for 8.33% bonus under section 33C(2) of ID Act not maintainable.

Management, Broadcasting Corporation of India, Chennai vs. Presiding Officer, Central Government Labour Court, Chennai & Anr. 2010 LLR 547 (Madras HC)

Workers dismissed for riotous behaviour will not be entitled for bonus under the Act not only for the year in which misconduct was committed but also for the other years. Disqualification under sec. 9(b) of the Bonus Act is complete.

LABOUR Judgments



V.G. Textiles (Private) Ltd. vs. Assistant Commissioner of Labour and Another. 2010 LLR 1103 (Madras HC)

CHARGE SHEET

When chargesheet issued by higher rank officer, can not be said to be by unauthorised person.

M.Y. Khan vs. Tata Engineering & Locomotive Co. Ltd. 2010 LLR 1295 (Jharkhand HC)

CONTRACT LABOUR

Even if contractor does not have licence under CLA, court can't direct absorption of contract labour.

V.I.P. Industries Ltd. vs. Athar Jameel and Others. 2010 LLR 9 (Bom. HC)

Govt. can't refuse to refer the dispute on the plea that there were different contractors engaged in the company.

Manmatha Kumar Jena & Ors. vs. Union of India & Ors. 2010 LLR 78 (Cal. HC)

When neither the contract is found to be sham or camouflage, nor notification under sec. 10 is issued, no absorption of contract labour can be done merely on the ground that such contract workmen completed 240 days and sec. 7 & 12 CLRA not complied with.

M/s. Bharat Coking Coal Ltd. vs. Workmen M/s. Bharat Coking Coal Ltd. and Another. 2010 LLR 69 (Jharkhand HC)

It is the preliminary obligation of the principal employer to deposit ESI & PF for the employees engaged through contractor which can be recovered from the contractor.

Gangadhar Bajpai and Ors. vs. Indian Oil Corporation and Ors. 2010 LLR 120 (Del. HC)

In case of Delhi International Airport authority Pvt. Ltd. Central Govt. would be the Appropriate Govt. for the purpose of sec. 10 of CL Act. and DIAL is bound by the notification of 2004 issued by Central Govt. prohibiting the employment of contract labour in the work of trolley retrieval in Delhi Airports.

Indira Gandhi Airport TDI Karamchari Union vs. Union of India and Anr. 2010 LLR 214 (Del. HC)

If licence is not taken by the contractor, it will not give any right to an employee working under him to get

his services regularized under the principal employer.

Tumkur Pura Karmikara Sangha (Regd.) vs. Municipal Council, Tumkur & Anr. LLJ IV 2009 P. 709 (Karn. HC)

No regularization of workman where neither employer-employee relation existed nor job nature was permanent.

Employees in Relation to Management of 'D' Ropeways, of M/s Bharat Coking Coal Ltd., Bhulan Bararee Camp, Dhanbad vs. Workmen. 2010 (124) FLR 176 (Jharkhand HC)

Even if contract labour system is not prohibited by Govt., management should explore the possibility of retaining existing workers under new contractor.

Sheikh Zahengir Ali and Others vs. Union of India and Others. 2010 (124) FLR 636 (Cal. HC)

No regularization or absorption of casual labours working for long time.

Indian Oil Corporation Ltd. vs. General Secretary, Vadodara Kamdar Union. 2010 LLR 366 (Guj. HC)

Prosecution for violation of certain rules of Contract Labour Act against chairman and chief executive of Jet Air Ways will not be maintainable being not responsible in any way for the conduct of the business of the establishment in which the alleged violation of law was said to have been committed.

Mr. Naresh Goel vs. State rep by Labour Enforcement Officer & Anr. 2010 LLR 522 (Karn. HC)

It is not for the Govt. to decide whether the contract between principal employer and contractor is sham or genuine but to be adjudicated by Labour Court only.

Coimbatore Cement Workers' Unions vs. Management of A.C.C. Ltd. & Ors. 2010 LLR 478 (Madras HC)

Air India, having an agreement with Hotel Corporation of India to run Chef and canteen for the employees, cannot be the employer of canteen employees.

Air India Ltd. vs. Rakesh Kumar & Ors. 2010 LLR 669 (Del. HC)

High Court can't direct Govt. to abolish contract labour system as prevailing in the industry.

The Workmen of M/s NTTF Workers Union (Regd) (rep. by its President) vs. The State of Karnataka, Rep. by its Secretary, Department of Labour and Others. 2010 LLR 770 (Karnataka HC)

Providing shoes, uniform, medical facility, depositing PF & ESI by principal employer for contractor workers as statutory compliance will not create direct relationship between principal employer and contract workers.

LABOUR Judgments



Cement Corporation of India Ltd. vs. Presiding Officer, Labour Court-cum-Industrial Tribunal, Hisar & Ors. 2010 LLR 704 (Punjab & Haryana HC)

High Court judge observation that contract workers of outgoing contractor be engaged by incoming new contractor will not amount as direction and merely will be an expression of hope.

Calcutta Port Trust vs. Shaikh Jahangir Ali and Others. 2010 LLR 796 (Cal. HC)

While exercising powers under sec. 10(1) and (2) of Contract Labour Act, Govt. is not required to afford an opportunity of hearing to employer.

Damodar Valley Corporation vs. State of Jharkhand and another. 2010(126) FLR 312 (Jharkhand HC)

Employer not to pay direct payment of revision wage difference to contract labour and will be through contractor only.

Venkaiah Chowdary M. and Ors. vs. Municipal Corporation of Guntur, Guntur and Ors. 2010 II CLR 997; 2010 LLR 992 (AP HC)

To conclude whether a contract worker is a worker of principal employer and contract is bogus, several factors like (a) who is appointing authority (b) who is pay master (c) extent of supervision and control (d) who directs "how" the job is to be done (e) nature of establishment and who can dismiss have to be kept in mind by courts.

In this case contract was found bogus as these parameters indicated towards direct relationship of master and servant between principal employer and contract labour.

General Manager (P&A), Hindustan Petroleum Corporation Ltd. vs. General Secretary, General Employees Association & Ors. 2010 LLR 957 (Bom. HC)

Notification issued by State Govt., prohibiting contract labour where Appropriate Govt. is Central Govt., liable to be quashed.

Indian Iron & Steel Co. Ltd. vs. Union of India & Ors. 2010-II CLR 874 (Cal. HC)

Principal employer is responsible for payment of wages to the contractor workmen when contractor fails to pay.

Shree Mata Vaishno Devi Shrine Board & Anr. vs. Gandarb Singh & Ors. 2010 LLR 1092 (J & K HC)

Workers of the contractor or their Union, if aggrieved with the contract labour system, can approach the Government for abolition of the contract labour system and not the courts. Factory Inspector can't stop contractor workers to work for principal employer of his own.

MRF United Workers Union (represented by its General Secretary, Sri G. Shankar) and Anr. vs. Chief Inspector of Factories, Chennai and Others. 2010(3) LLN 359 (Madras HC)

When the relationship of the cook with the canteen society as employer-employee is not established, reinstatement award of such cook against the principal company would be proper.

Baroda Electric Meters Ltd. vs. Makanbhai Kanjibhai Makwana. 2010 LLR 1225

If the contractor's establishment does not hold a valid contract as contemplated by S.12 of the Act, the workman would be presumed to be the workman of the principal employer.

Chet Ram v. Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad & Anr. CLR III 2010 P. 105

For Cochin international airport limited, appropriated Govt. would be state and not central Govt. under CL Act.

Cochin International Airport Ltd. vs. Regional Labour Commissioner. 2010 (126) FLR 43 (Kerala HC)

Even in the case of fresh tender to engage contractor for certain jobs, contractor worker's working for 25-30 years should not be made to suffer.

Bokaro Steel Workers' Union and Another vs. Steel Authority of India Ltd. and Others. 2010 LLR 1115 (Jharkhand HC)

Govt. rightly rejected the reference for adjudication, when workers could not establish that they were engaged through contractor and system was sham & bogus.

Labour Mazdoor Sangh v. Tata Communications Ltd. 2010 LLR 1291 (Bom. HC)

CONTINUED ILL-HEALTH

Unless continued ill health of a workman does not effect his performance of duties, employer can't take benefit of sec. 2(oo) of ID Act.

Groz-Beckert Asia Pvt. Ltd. vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh & Anr. 2009 LLR 1304 (Punjab & Haryana HC)



DISMISSAL

When employee is found guilty of misappropriating funds, losing confidence in such employee is natural and dismissal is justified.

P. Channabasavaiah vs. Divisional Controller, KSRTC, Bangalore. 2010 LLR 36 (Karn. HC)

Dismissal of a temporary workman, obtaining employment based on forged certificates, does not warrant interference by the High Court.

Mahendra Rai vs. U.P. Public Service Tribunal No. 1, Lucknow and Others. 2009 (123) FLR 1007 (Alla. HC)

Appellate authority can't re-appoint the dismissed employee from the initial stage. He could do one of the three things - either affirm, set aside or modify the dismissal of the disciplinary authority.

U.P. State Road Transport Corporation vs. State of U.P. and Others. 2010 LLR 290 (All. HC)

Dismissal for misappropriation by clerk would be proper.

Ganesh Sahakari Sakhar Karkhana Ltd., Ahmednagar vs. Dashrath Bajirao Nirgude and Another. 2010 (124) FLR 307 (Bom. HC)

Dismissal of workman for hurling abuses to superior under drunken condition in his cabin will be justified, no matter if he is acquitted in criminal case.

Nikanth Fakiraji Bhadake vs. Maharashtra State Road Transport Corporation, Nagpur. 2009 (4) LLN 908 (Bom. HC)

Dismissal of bus conductor proper for not issuing tickets.

Chander Pal (Shri) vs. Delhi Transport Corporation. 2010 LLR 262 (Del. HC)

Dismissal of bank manager justified who accommodated parties by inviting risk to bank in over-enthusiastic manner in violation of prescribed norms and discipline.

Kulwant Rai Goyal vs. Disciplinary Authority, Punjab and Sindh Bank, Mumbai & Ors. 2010 LLR 458 (Bom. HC)

Dismissal of workman justified for preparing and forging fake appointment letters.

Manoj Kumar Sinha vs. Presiding Officer, Central Government Industrial Tribunal No. 1 Dhanbad and Another. 2010 LLR 475 (Jharkhand HC)

Dismissal not proper for minor irregularities more so when charges were vague.

Managing Director, Garhwal Mandal Vikas Nigam Ltd. vs. Kamal Nayan Nautiyal. 2010-I CLR 949 (UP HC)

Habitual absence for 127 days and 196 days will justify dismissal.

Brijlal vs. Steel Authority of India Ltd. & Ors. 2010 LLR 639 (Chattisgarh HC)

Habitual and continuous absence for 70 days will be sufficient for dismissal.

Delhi Transport Corporation vs. Sh. Rishi Prakash. 2010 LLR 656 (Del. HC)

Dismissal not to be set aside for the charges of theft of tea bag of 30 Kg. by employee.

Management of Dayang Tea Estate, P.O. Golaghat, Assam vs. Secretary, Assam Chah Karmachari Sangha, Distt. Golaghat, Assam and Others. 2010 LLR 603 (Gauhati HC)

Ex-parte award confirming dismissal for unauthorized absence not to be challenged in writ.

J. Lokesh vs. Juggath Pharma Industries Ltd. 2010 LLR 606 (Karnataka HC)

Dismissal justified for unauthorized absence.

H.L. Mahendra vs. Divisional Controller, Disciplinary Authority, K.S.R.T.C., Bangalore. 2010 LLR 610 (Karn. HC)

Attending duties for only about two years in 9 years service will be sufficient cause for dismissal.

E.M.E. Edwards St. George School vs. The Presiding Officer, Industrial Tribunal Chennai and Anr. 2010 LLR 648 (Mad. HC)

Dismissal on confession without enquiry would be illegal.

A. Karthikeyan vs. Managing Director, TASMAL Ltd. Chennai and Others. 2010 LLR 663 (Mad. HC)

When bus driver did not stop the bus on signal from checking party and on finding serious irregularities, bus conductor misconduct was condoned, the driver also deserves the same treatment. Dismissal set aside.

U.P. State Road Transport Corporation vs. Satendra Singh and Another. 2010 LLR 697 (Alla. HC)

Dismissal of service without affording hearing opportunity will be illegal.

Ram Ji Misra vs. U.P.S.R.T.C. and Others. 2010 LLR 703 (Alla. HC)

Dismissal proper for man handling and violent behaviour by security guard towards his superior.

Vishwanath A. Khatal vs. Voltas Ltd. 2010 LLR 744 (Bom. HC)

LABOUR Judgments



Dismissal proper for fraudulently availing two free air tickets for his daughters-in-laws showing them as daughter and also misrepresenting himself as senior manager.

R.L. Moria vs. Chairman-cum-Managing Director, IAL & Ors. 2010 LLR 732 (Del. HC)

When the misconduct is of riotous and disorderly behaviour, causing damage to machinery, threatening, abusing, intimidating and assaulting the watchman, dismissal will be justified.

Bhoopathi N. and Others vs. Presiding Officer, Labour Court, Salem and Another. 2010 LLR 715 (Mad. HC)

If dismissal is based upon certain allegations, even daily wage can't be dismissed without enquiry.

Chief Signal & Telecommunication Engineer/Construction, Chennai vs. Presiding Officer, Central Government Industrial Tribunal, Chennai & Anr. 2010-II LLJ 429 (Mad. HC)

When there was no proof of having consumed liquor by driver and also he was acquitted in criminal case, labour court was right in modifying the punishment of dismissal.

Gujarat State Road Transport Corporation vs. V.K. Jadeja. 2010 (125) FLR 944 (Guj. HC)

Targeting employee alone for union activities amounts to victimization. Employee participation in stoppage of work though misconduct, dismissal would be disproportionate.

Shivankari Gowda vs. Alpas Granite Private Ltd., Bangalore. 2010 LLR 881 (Karn. HC)

Dismissal justified for obtaining employment by forged caste certificate.

R. Venkateswarlu vs. Divisional Railway Manager, South Central Railway, Hyderabad Division, Secunderabad and Others. 2010 (126) FLR 3 (AP HC)

Dismissal justified for strike in hospital and assaulting/abusing senior officers.

Bombay Labour Union vs. Bhartiya Arogya Nidhi & Ors. 2010 LLR 897 (Bom. HC)

Dismissal justified of bus conductor for collecting fare and not issuing tickets.

Rajabhai R. Gadhavi vs. Divisional Controller. 2010 LLR 913 (Guj. HC)

Dismissal justified for misappropriation of tickets amount.

Ram Sahai Chaudhary vs. U.P. State Roadways Transport Corporation and Others. 2010(126) FLR 589 (All. HC)

Dismissal proper for the misconduct of using filthy and abusive language towards another employee.

Darshan Singh v. LeMeridian, Janpath, New Delhi. 2010 LLR 1153 (Del. HC)

Dismissal not proper for committing offence under IPC that too related to a dispute at the home town of workman. Offences under Sec. 323, 148 and 149 of IPC can't be construed as commission of guilt of moral turpitude by workman.

BSES Rajdhani Yamuna Power Ltd. vs. Union of India & Others. 2010 LLR 1210 (Del. HC)

The dismissal of sales manager justified for threatening and abusing his superior.

Jawahar Khalifulla vs. Deputy Commissioner of Labour (Appeals), Madras and Others. 2010 LLR 51 (Madras HC)

Habitual absence will justify dismissal.

Pandurang Vithal Keven vs. Bharat Sanchar Nigam Ltd. (Telecom Factory), Mumbai and Anr. 2010 LLR 234 (Bom. HC)

Dismissal justified for charging less amount from Hotel guest and cheating her causing loss to Hotel reputation.

Ramany S. V. Hotel Pondicherry Ashok. 2010 LLR 1259 (Mad. HC)

EMPLOYEES PROVIDENT FUND

To challenge liability under EPF Act, proper course would be to go in appeal and not through writ in HC.

Committee of Management, Mahavir Singh Inter College, Ghaziabad and Another vs. Union of India and Another. 2010 LLR 22 (All. HC)

When employer is negligent during proceedings, ex-parte order can't be set aside under EPF Act.

M/s. Durga Body Builders vs. Union of India and Another. 2010 LLR 84 (Jharkhand HC)

The employer can be directed to pay the amount of provident fund etc. in respect of workers who are identifiable.

Ashiana Housing Ltd., East Singhbhum vs. Assistant Provident Fund Commissioner & Anr. CLR III 2009 P. 455 (Jharkhand HC)

LABOUR Judgments



There should be cogent documents to show that the two establishments are separate and cannot be clubbed together for the purpose of coverage under EPF Act.

Om Investment Corporation, Bangalore vs. Assistant Provident Fund Commissioner. LLJ IV 2009 P. 317 (Karn. HC)

Canteen workers of a hospital is liable to be covered under EPF Act as it has connection with the work of the hospital. Canteen is an amenity for visitors or patients and staff of the hospital. Employee definition under the Act is wide enough to include canteen workers.

Joseph A.V. (Dr.) vs. Assistant Provident Fund Commissioner & Anr. 2010 LLR 75 (Kerala HC)

Where pension service is wrongly calculated, PF authorities are liable for rectification, no matter there is such provision in the scheme or not.

P.T. Ramachandran vs. Regional Provident Fund Commissioner, Tirunelveli and Ors. 2010 LLR 48 (Madras HC)

In the absence of any material evidence principal employer can't be held responsible for payment of escaped amount of PF under sec. 7-C.

Best and Crompton Engg. Ltd., Bangalore vs. Assistant Provident Fund Commissioner, E.P.F. Organisation, Bangalore and Anr. 2010 LLR 151 (Karn. HC)

Units working with functional integrality would be clubbed under EPF Act.

M/s. Paramount Leathers vs. Regional Provident Fund Commissioner and Another. 2010 (124) FLR 84 (Cal. HC)

Selling agency agreement between manufacturer and retailer will not be sufficient to club both units as one for the purpose of Provident Fund under EPF Act.

Kunj & Company vs. Regional Provident Fund Commissioner (ENF). 2010 LLR 305 (Del. HC)

In order to recover contractor labour PF contribution from principal employer it is for the PF department to prove first that he was principal employer in respect of such contract labour.

Best and Crompton Engg. Ltd., Bangalore vs. Assistant Provident Fund Commissioner, E.P.F. Organisation, Bangalore and Another. 2010 LLR 272 (Karn. HC)

Where pension claim is rejected, whole amount is to be remitted with interest by the EPFO to the employee.

R.R.V. Thampuran vs. Union of India and others. 2010(124) FLR 45 (Kerala HC)

Liability to pay E.P.F. Contributions in respect of the workers employed in a canteen attached to a hospital is that of the hospital management.

Dr. A.V. Joseph vs. Assistant Provident Fund Commissioner & Anr. LLN (4) 2009 P. 884 (Kerala HC)

Order determining Provident Fund and other dues passed in violation of the principles of natural justice and without considering the employer's reply is not sustainable.

Raj Kamal Electroplaters, Moradabad vs. Regional Provident Fund Commissioner, Kanpur. LLN(1) 2010 P. 139 (All. HC)

No clubbing of two establishments under EPF Act when no functional integrality is found.

Mumbai Mazdoor Sangh vs. Regional Provident Fund Commissioner, Maharashtra & Goa & Ors. 2010 LLR 397 (Bom. HC)

No demand of contribution under EPF can be made without giving reasonable opportunity to employer to explain.

M/s. Maple Exports Pvt. Ltd. & Anr. vs. Employees' Provident Fund Organisation & Ors. 2010 LLR 380 (Cal. HC)

Firm of Chartered Accountant having 16 employees and 12 articulated clerks is covered by E.P.F. Act.

C.C. Chokshi & Co. & Anr. vs. Regional Provident Fund Commissioner-II & Ors. LLN(1) 2010 P. 209 (Guj. HC)

Non deposit of PF contributions by employer after deduction from employees salary is criminal offence.

Pravin Kumar and others vs. Mineral Area Development Authority and Others. 2010 LLR 365 (Jharkhand HC)

Special allowance paid to some employees is not part of their basic pay and is not liable for contribution to provident fund.

Gurukripa Beedi Industry Pvt. Ltd. vs. Assistant P.F. Commissioner. CLR I 2010 P. 392 (Karn. HC)

Condition of deposit of 40% of assessed EPF amount by tribunal without giving reason is liable to be turned down.

Kerala State Cashew Development Corporation Ltd. vs. Regional Provident Fund Commissioner. 2010 LLR 387 (Kerala HC)

Child born out of a void marriage is also entitled to family pension on the death of parents.

Rakhi vs. Accountant General. LLN(1) 2010 P. 220 (Kerala HC)

For treating business units as one for the purpose of E.P.F. Act, there should be functional integrality between them.

LABOUR Judgments



Alaghu Pharmacy vs. R.P.F. Commissioner, Coimbatore & Anr. LLJ I 2010 P. 487 (Madras HC)

Order of the Recovery Officer making recovery under EPF Act against a Managing Director of the Company, without ascertaining as to whether he is an employer or not, is liable to be set aside.

Lakshmi Niwas Bangur vs. Regional Provident Fund Commissioner, West Bengal & Ors. 2010 LLR 552 (Cal. HC)

Dismissal of application for setting aside the ex-parte proceedings before EPF tribunal in camp hearing organized without the constant of the establishment, though having prerogative of organizing such camp, would be improper. Ex-parte order set aside. Establishment directed to appear before tribunal.

Xavier Institute of Social Service vs. Employees' Provident Fund Appellate & Ors. 2010 LLR 470 (Del. HC)

Liability for payment of provident fund contributions by an employer accrues only after it is determined by the concerned Authority under the EPF Act.

Tapan Kumar Bhattacharyya vs. Assistant Provident Fund Commissioner and Others. 2010 LLR 597 (Cal. HC)

RPFC directions to comply & deposit the PF contributions as determined to principal employer would be illegal without deciding the question of jurisdiction when the employer said that employees were working through contractor.

Aditya Birla nuvo Ltd. and Another vs. Regional Provident Fund Commissioner and Others. 2010 LLR 667 (Cal. HC)

Persons working on behalf of chartered accountant in the company not to be taken into counting to make 20 or more employees for EPF coverage.

Pee Aar Electrodes vs. Regional Provident Fund Commissioner & Anr. 2010 LLR 622 (Del. HC)

Levy of damages for delayed payment of provident found contributions is not an absolute rule.

Regional Provident Fund Commissioner, Mangalore vs. M/s. Jamiyyatul Falah, Mangalore & Anr. 2010 Lab IC 1365 (Karn. HC)

Chairman of a school not to be prosecuted for PF default.

Dr. Vellayani Arjunan vs. Employees' Provident Fund Organisation. 2010 LLR 645 (Kerala HC)

Without determination of money, any order of PF authorities in such regard will be illegal.

Terrace Estate, Unit Of United Plantation Ltd. vs. Assistant Provident Fund Commissioner, Coimbatore. 2010 LLR 612 (Madras HC)

EPF authorities can't direct the employer to submit bank guarantee during pendency of sec. 7A proceedings. *Shaw Wallace & Co. Ltd. vs. Regional Provident Fund Commissioner-II, W. Bengal & Andaman and Nicobar Islands. 2010-II LLJ 394 (Cal. HC)*

When EPF authorities cover an establishment on the basis of employing more than 20 workmen, it is for the employer to prove otherwise being custodian of all record and registers of employees, failing which coverage of the establishment will be proper.

Saraswati Construction Company vs. Central Board of Trustees. 2010 LLR 684 (Del. HC)

Under EPF, the proper forum to challenge the order of the authority is appellate tribunal and not the HC through writ.

U.P. State Sugar and Cane Development Corporation, Unit Pipraich, Rampur (through its General Manager) vs. Regional Provident Fund Commissioner, Gorakhpur. 2010 LLR 795 (Alla. HC)

Trainees, as engaged under Standing Orders of an establishment, are rightly excluded from coverage under EPF Act.

Gorware Electronics Ltd. vs. Regional Provident Fund Commissioner & Anr. 2010 LLR 882 (All.. HC)

Institution engaged in imparting training and education rightly covered under EPF Act.

All India Association for Christian Higher Education vs. Presiding Officer, Employees' Provident Fund Appellate Tribunal & Anr. 2010 LLR 851 (Del. HC)

Establishment rightly covered under EPF Act when he could not establish that no systematic activity of imparting knowledge was done by them.

Professional Assistance For Development Action vs. Presiding Officer, Employees Provident Fund Appellate Tribunal and Another. 2010 (125) FLR 961 (Del. HC)

For what period and what amount should be paid by an employer for filing an appeal before the EPF Appellate Tribunal, is to be decided under section 7(A) of the Employees Provident Funds Act.

Lalan Kumar Thakur vs. State of Jharkhand and Others. 2010 LLR 886 (Jharkhand HC)

LABOUR Judgments



No waiver of damages for delayed payment of provident fund contributions is allowed when the petitioner does not fall within the clause of 'industrial companies' to be entitled to relief under second proviso to section 14B of the Provident Funds Act.

Kancheepuram Kamakshiamman Co-operative Spinning Mills Ltd., Kancheepuram vs. Central Board of Trustees of Employees' Provident Fund Organisation (through its Chief Executive Officer) and Ors. 2010 LLR 884 (Mad. HC)

When the employer deposited the PF amount as directed by EPF deptt., acquittal in prosecution case rightly ordered.

Provident Fund Inspector, Jaipur vs. P.M. Rungta and Others. 2010 LLR 819 (Raj. HC)

Subsequent payment of EDLI and Admn. Charges will not be a ground to quash criminal proceedings.

Deepak Puri vs. State of West Bengal. 2010 (126) FLR 28 (Cal. HC)

EPF authorities not empowered to impose or recover damages for delayed PF contributions from PF trust exempted under the Act.

Regional Provident Fund Commissioner vs. Hooghly Mills Company Ltd. and Others. 2010 LLR 1020 (Cal. HC)

Out of 21 employees when three labours were of the out side truck used for loading-unloading, EPF Act will not be applicable, more so when the inspection report was not signed by both the inspectors.

M/s Saroj Oil & Dal Industries vs. Central Board of Trustees (Through CPF Commissioner) & Anr. 2010 LLR 1019 (Del. HC)

Employees' Provident Fund Appellate Tribunal can condone the delay for filing an appeal even beyond 90 days.

M/s. Jeevan Champa Corporation (Rep. by its Prop.) vs. The Asstt. Provident Fund Commissioner & Anr. 2010 LLR 975 (Karn. HC)

Levy damage exercise under EPF Act can't be undertaken as mechanical process. Such order need to disclose reasons.

Quilon Automobile Employees Co-op. Society Ltd. vs. Employees' Provident Fund Organisation and Anr. 2010 LLR 1037 (Kerala HC)

EPF authorities can reopen the enquiry under sec. 7A of the Act.

Management, Coromandel International Ltd., Ranipet vs. Assistant Provident Fund Commissioner, Vellore and Others. 2010 LLR 1118 (Madras HC)

Appeal against the order of EPF authority beyond 60 days but within 120 days should not have been rejected by the Employees' Provident Fund Appellant Tribunal.

New Great Eastern Spinning and Weaving Co. Ltd. v. Central Board of Trustees, E.P.F. Organisation, New Delhi and Others. 2010 LLR 1151 (Bom. HC)

EPF Act will not apply to multi state co-operative bank.

Ratnakar Bank Ltd., Kolhapur vs. Regional Provident Fund Commissioner, Kolhapur & Ors. 2010 LLR 1152 (Bom. HC)

Nomination under EPF Act by the employee can only be in favour of legal heir and not otherwise. Even if nominated, will not get PF accumulations.

Antonio Joao Fernandes vs. Assistant Provident Fund Commissioner, Goa, and Others. 2010(3) LLN 712 (Bom. HC)

Without determining liability of the establishment under sec. 7 of EPF Act it could not be called upon to deposit any unspecified amount.

Tapan Kumar Bhattacharya v. Assistant Provident Fund Commissioner & Ors. LLJ III 2010 P. 700 (Cal. HC)

In case APFC made no enquiry before imposing damages, matter has to be remanded back for fresh enquiry.

Regional Provident Fund Commissioner vs. Kay Iron Works Pvt. Ltd. and Anr. 2010 III CLR 558 (P & H HC)

ENQUIRY

The disciplinary authority has to give the delinquent an opportunity of hearing, if it disagrees with the findings of the enquiry officer.

Anand Kumar Singh vs. U.P. State Road Transport Corporation. CLR III 2009 P. 490

Successive enquiries on the same charges expecting a favourable report are deprecable.

Shaikh Mohd. Hussain vs. A.P. State Wakf Board. CLR III 2009 P. 753 (AP HC)

When workman is convicted for the offence of moral turpitude under sec. 302 and 498A of IPC, no domestic enquiry is required before effecting dismissal from services.

The Tata Power Co. Ltd. vs. K.T. Mane and Ors. 2010 LLR 88 (Bom. HC)

LABOUR Judgments



Evidence collected during preliminary enquiry behind the back of the delinquent cannot be relied upon unless the concerned witnesses are examined before the Enquiry Officer.

M.B. Siddharaju vs. Management of Powergear Ltd. Bangalore. CLR III 2009 P. 290 (Karn. HC)

Dismissal of an employee without holding disciplinary enquiry is not sustainable.

District Manager, TASMAL, Coimbatore Region, Erode vs. S. Velliyangiri. CLR 2009 P. 1032 (Madras HC)

No approval to the penalty of dismissal justified when the departmental enquiry is not bonafide.

Tamil Nadu State Transport Corporation vs. Joint Commissioner of Labour & Anr. CLR III 2009 P. 775 (Madras HC)

Non-furnishing of documents to the delinquent employee is fatal making enquiry invalid.

Management of Turbo Energy Ltd. Pulivalam vs. Presiding Officer, Labour Court, Vellore & Anr. LLJ IV 2009 P. 115 (Madras HC)

If no objection is raised during the enquiry about the language of the proceeding, then the same cannot be subsequently raised.

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

When employer dispensed with holding the domestic enquiry, some cause have to be shown by management.

P.N. Shukla vs. Chairman, U.P. State Handloom Corporation Ltd., Lucknow. 2009 (123) FLR 993 (Alla. HC)

Even when the delinquent employee does not cooperate in the enquiry, the opposite parties are not absolved of the duty for proving the charges by an independent enquiry.

Z.A. Siddiqui vs. District Manager, Food Corporation of India, Sitapur and Others. 2009 (123) FLR 841 (Alla. HC)

In preliminary enquiry it is discretion of the management to provide hearing to the workman but in regular enquiry it is definitely required that workman should be heard.

Devandran L. vs. Superintending Engineer, Chennai Electricity Distribution Circle (Central), Tamil Nadu Electricity Board and Others. 2009 IV LLJ 895 (Mad. HC)

Validity of enquiry has to be decided first before justification of punishment.

Hindustan Petroleum Corporation Ltd., through Its Senior Regional Manager, Nagpur vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Nagpur & Ors. 2010 LLR 265 (Bom. HC)

Labour Court has power to reappreciate the evidence of the domestic enquiry and satisfy itself whether the findings are correct or not.

S. Jayaraman vs. Management, Tamil Nadu S.R.T.C. Salem. LLN(1) 2010 P. 258 (Madras HC)

While adjudicating the dispute pertaining to dismissal of workmen after holding of enquiry, it is not imperative by the Labour Court to frame and decide the issue about validity of enquiry at preliminary stage.

Dwarikesh Sugar Industries Ltd. vs. Presiding Officer, Labour Court, Rampur and Anr. 2010 LLR 529 (All. HC)

Completing enquiry within 4-5 days when workman refused to accept the management communication and boycotted the enquiry will not be invalid and dismissal based on such ex-parte enquiry findings will be proper.

Surinder Kaushik vs. General Manager, Badarpur Thermal Power Station. 2010 LLR 466 (Del. HC)

A delay of two years and four months in issuing the chargesheet, after the evidence, will not vitiate the enquiry.

Bindaprasad S/o Satyanarayan Chourasia vs. Narmada Malwa Gramin Bank, Indore. 2010 LLR 521 (MP HC)

No fresh enquiry can be instituted for the same charges by the authority without setting aside the findings of the earlier enquiry officer.

Shaik Mohd. Hussain vs. A.P. State Wakf Board, Hyderabad. 2010(125) FLR 471 (AP HC)

Enquiry will be vitiated when EO relied upon non supply of document to employee.

B. Viswanatha Reddy vs. Andhra Pragathi Grameena Bank, Rep. by Its Chairman and Others. 2010(125) FLR 493 (AP HC)

When security guards admitted the guilt of having consumed liquor on duty and also admitting the same fact before enquiry, completion of enquiry within 1½ hours will not make enquiry invalid.

A.N. Bhoir and Ors. vs. The Tata Power Company Ltd. & Anr. 2010 LLR 694 (Bom. HC)

Ex-parte enquiry will be invalid when disciplinary authority discarded employee medical certificate about

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unability to attend the enquiry. It will be the enquiry officer and not the disciplinary authority who will decide about adjournment of the enquiry.

Punjab National Bank & Ors. vs. K. Prabhakaran Amrutha. 2010 LLR 749 (Kerala HC)

Enquiry can't be stayed despite pendency of criminal proceedings.

Gulab Chandra Vishwakarma vs. South Eastern Coalfields Ltd. and Ors. 2010 LLR 758 (MP HC)

An enquiry will be violative of principles of natural justice when the delinquent employee has not been communicated the time, date and venue of the enquiry hence the order of termination of the person is liable to be set aside.

Km. Minati Bhattacharya vs. Regional Food Controller, Kanpur and Others. 2010 LLR 887 (Alla. HC)

If enquiry officer and management representative are legally trained person, employee would be entitled for assistance of legal practitioner.

Yeshwant Harichandra Gharat vs. Clairant Chemicals (I) Ltd. and another. 2010(126) FLR 360 (Alla. HC)

Ex-parte enquiry will be valid when repeated adjournments were granted to workman on request and even then he absented and did not produce evidence.

Mohammad Vakas S/o Mohammad Awes vs. Factory Manager, B. Arun Kumars International Ltd., Pithampur, District-Dhar. 2010 LLR 850 (MP HC)

Labour Court is bound to frame and decide the preliminary issue first of validity and fairness of the enquiry in case of dismissal.

Hydraulics Pvt. Ltd. Pondicherry vs. Presiding Officer, (II Addl. District Judge) Labour Court, Pondicherry & Ors. 2010 LLR 820 (Mad. HC)

Court not to interfere in the order when there is no infirmity in the enquiry.

Deo Sidh Singh vs. Bihar State Electricity Board. 2010 LLR 993 (Patna HC)

When in enquiry fair chance is not given to the workman to defend himself, must be restarted with new enquiry officer.

Chairman, Nagar Panchayat Suriyawan, Bhadohi and Another vs. Aziz and Another. 2010 LLR 1122 (All. HC)

Enquiry conducted by an advocate as enquiry officer who is active member of the law firm providing all legal support to the employer about disciplinary proceedings against employee would be null and void specifically when such firm represented the management in the court against such termination.

Taj Mahal Hotel vs. Industrial Tribunal-I & Ors. 2010 LLR 1077 (Del. HC)

When neither the bus conductor was examined in the enquiry nor driver explanation was considered by the enquiry officer, Industrial Tribunal rightly set aside the punishment of increment stoppage based on such enquiry findings.

Gujarat State Road Transport Corporation vs. Amarsinh Premjibhai Parmar through Secretary. 2010 LLR 1067 (Guj. HC)

Disciplinary authority can differ with the findings of the enquiry officer. Enquiry officer can't be compelled to examine a particular witness. Even one witness supporting the charge will be sufficient.

V. Marimuthu vs. R. Ramachandran and Others. 2010 LLR 1096 (Madras HC)

Court can't re-appreciate the evidence recorded in the disciplinary enquiry. Court has to see only whether the evidence on which disciplinary authority has relied, is available on the record or not.

Sagar Sadashiv Kasture, Pune vs. Central Bank of India, Bombay and Ors. 2010 III CLR 591 (Bom. HC)

It is for the workman and not employer to prove validity of the enquiry.

Federal Mogul Bearing India Ltd. v. State of H.P. & Ors. 2010 LLR 1162 (HP HC)

Evidence of hand writing expert is not required when bank employee made entries undoubtedly.

Chandra Shekhar Prasad Sinha vs. State Bank of India, Ranchi & Ors. 2010 LLR 1241 (Jharkhand HC)

When important witness was not examined in the enquiry and driver acquitted by the court for rash and negligent driving, termination on such ground would be illegal and reinstatement will be natural consequence.

K. Desikamani (Deceased) through his Legal Representatives vs. Presiding Officer, Labour Court, Vellore and Anr. 2010 LLR 1216 (Mad. HC)

Court can only interfere in the case of dismissal or discharge and not otherwise punishment. When enquiry was held to be fair and valid, reducing the punishment

LABOUR Judgments



of stopping special allowance by the court would be out of jurisdiction.

Zonal Manager, Bank of India, Chennai vs. General Secretary, Bank of India Staff Union, Chennai and Anr. 2010 LLR 1219 (Mad. HC)

Labour Court decision that enquiry was not fair, will not be interfered with by High Court.

Management of FAL Industries Limited, rep. by its Manager, Legal and Company Secretary vs. Presiding Officer, Labour Court, Salem and Anr. 2010 LLR 1221 (Mad. HC)

Issue of charge sheet after 5 years & non production of original documents will invalidate the enquiry.

Parameswaran V. vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Chennai and Anr. 2010-III CLR 421 (Mad. HC)

In the case of absenteeism, merely publication in news paper will not be sufficient to presume abandonment of job by employee. Enquiry is required.

Shiv Shanker Sharma vs. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. 2010 LLR 1175 (Raj. HC)

Non-furnishing of enquiry report to delinquent employee will be violative of principles of natural justice and vitiate the proceedings and punishment.

Madhusudan Dikshit vs. UCO Bank, rep. thro its G.M. (Personnel). 2009 IV LLJ 829 (Orissa HC)

Termination of a workman, without holding of enquiry, will not be valid so much so that even no notice, as stipulated by clause 15(X) of the Certified Standing Orders, has been given.

Heavy Engineering Corporation Ltd., Ranchi vs. Somra Oraon. 2010-II LLJ 471 (Jharkhand HC)

ESI

Issue of different contradictory facts about the number of employees employed by the owner of the sweet shop is to be decided by the trial court only. Prosecution proceeding under ESI not to be quashed.

Badal Kumar Ghosh vs. State of Jharkhand and Another. 2010 LLR 1057 (Jharkhand HC)

Death by Heart attack can't be construed always as an accident during the course of employment.

Smt. Husna Khatoon and Others vs. M/s. Urmila Transport Company. 2009 LLR 1303 (Chattisgarh HC)

Dependents of an employee who committed suicide owing to depressive neurosis caused by an employment injury are entitled to make a claim u/s. 52 of ESI Act.

ESI Corporation vs. Leela. LLN (4) 2009 P. 274 (Kerala HC)

If employee crossed the salary limit under ESI on the date of accident, he will not be entitled to any benefit.

Employees' State Insurance Corporation, Coimbatore vs. N. Marappan and Another. 2010 LLR 52 (Madras HC)

Directors if getting salary will be deemed as employee under ESI Act and will be counted for the purpose of coverage.

Employees' State Insurance Corporation vs. Haryana Biological (P) Ltd. 2010 LLR 38 (Punjab & Haryana HC)

When the deceased workman was not covered under ESIC, direction of W.C. Commissioner making liable ESIC to pay compensation would be illegal. Bar of sec. 53 of ESI Act would operate.

Employees' State Insurance Corporation, Hyderabad vs. Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal and Others. 2010 LLR 145 (AP HC)

Both the transferor and transferee will be jointly and severally liable for payment of ESI contributions.

Regional Director, ESIC and Anr. vs. B. Mohanchandran Nair. 2010 LLR 155 (Kerala HC)

ESI will not simply become applicable merely because EPF is applicable. Definition of factory under both the Acts are different. When power is not in use and employees are less than 20, ESI will not be applicable.

E.A. Peeran Sahib Sons by Partner E.A.P. Akbar Basha, Peervan Bidi Merchants, Erode vs. Joint Regional Director and Deputy Director, Sub-Regional Office, Employees' State Insurance Corporation, Coimbatore and Anr. 2010 LLR 131 (Madras HC)

Section 72 of the ESI Act prohibiting employer not to reduce wages will be attracted only if two conditions are fulfilled. Firstly that the benefit payable to the employees prior to coming into force of the ESI Act must be under the condition of their service, and secondly that the said benefit must be similar to the benefit conferred by the ESI Act.

Dharam Paul Aggarwal and Others vs. State of Punjab and Others. 2009 (123) FLR 866 (Punjab & Haryana HC)

There is no limitation for imposing damages under ESI Act.

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Employees' State Insurance Corporation, Faridabad vs. M/s. Vinod Iron Foundry, Samalkha. 2009 (123) FLR 872 (Punjab & Haryana HC)

Employer is under no legal obligation to adhere to the advice of the ESI Inspector, being no such provision under the ESI Act.

M/s. Aryan Buff Manufacturing Co. and Another vs. Reg. Dir. E.S.I.C. and Others. 2010 LLR 271 (All. HC)

No ESI liability can be imposed on immediate employer without providing him opportunity of hearing.

Subrata Trade Agencies vs. Employees' State Insurance Corporation and Ors. 2010 LLR 298 (Gauhati HC)

CA firm establishment is not a shop under ESI Act. being a profession and not a business or trade.

M/s. Singhvi Dev and Unni Chartered Accountants vs. The Regional Director, ESI Corporation and Ors. 2010 LLR 275 (Karn. HC)

ESI can't claim damages for late payment when delay in contribution payment is attributed to ESIC.

Employees' State Insurance Corporation, Chandigarh vs. D.C.M. Engineering Products, Hoshiarpur. CLR I 2010 P. 242 (Punjab & Haryana HC)

Municipality having its own health scheme for employees does not fall within the ambit of the E.S.I. Act, 1948.

Kakinada Municipality vs. ESI Corporation, Hyderabad. LLJ I 2010 P. 407 (AP HC)

Using grinder and deep freezer in the restaurant with aid of power will amount to manufacturing process and will be cover under ESI Act.

Regional Director, ESI Corporation, Thrissur vs. P. Asokan. 2010 LLR 437 (Kerala HC)

ESI applicable on employees doing loading and unloading job even out side factory premises.

M/s. Jodhpur Woollen Mills Ltd. vs. Regional Director, ESI Corporation and Others. 2010 LLR 369 (Raj. HC)

Workman can claim compensation only through either under ESI or WC Act.

Regional Director, ESI vs. Bhopa Ram & Ors. 2010 LLR 411 (Raj. HC)

Without providing opportunity under Sec. 45A of the ESI Act, employer can't be called upon to pay contributions.

Sunny Packers vs. Employees' State Insurance Corporation and Anr. 2010 LLR 464 (Del. HC)

ESI authorities demand of ESI contribution from security agency on the mere assumption of employing 912 employees contrary to records would be illegal. ESIC directed to examine the records afresh.

C.D. Securities Services Network Ltd. vs. Employees' State Insurance Corporation. 2010 LLR 499 (Del. HC)

The E.S.I. Court has no power to condone delay.

Upendra Jena vs. Regional Director of E.S.I. Corporation. FLR (124) 2010 P. 893 (Orissa HC)

Limitation for recovery of money will not be applicable when ESIC has to determine and recover money under section 45A of the ESI Act.

E.S.I. Corporation vs. Indust. and Eng. Projects (P) Ltd. 2010 LLR 636 (Del. HC)

Unsigned survey report of Labour Department can't be a basis for ESI to cover the establishments.

Employees' State Insurance Corporation, New Delhi vs. Om Prakash and Ors. 2010-II LLJ 524 (Del. HC)

Establishment having registered office at Bombay with 13/16 employees and Shop at Madras can't be clubbed for the purpose of covering the Bombay office under ESIC.

The Regional Director, Employees' State Insurance Corporation, Bombay vs. M/s. Kishinchand Chellaram. 2010 LLR 836 (Bom. HC)

Establishment engaged in preparing gold and silver ornaments with the aid of gas lighter with flame to melt or join gold will be covered under ESI Act.

Regional Director, Employees' State Insurance Corporation, Panaji, Goa vs. Kohinoor, Represented by its Proprietor, Panaji, Goa. 2010 LLR 863 (Bom. HC)

Section 53 of the ESI Act, providing an embargo that no claim for accident will be made by an insured person from other than ESI, will not be applicable when the claim is made by the dependents of the deceased under Motor Vehicles Act.

Smt. Shridevi and Others vs. Smt. S. Sarojini and Another. 2010 LLR 800 (Karn. HC)

ESI damages rightly waived when company is in huge losses.

LABOUR Judgments



Employees' State Insurance Corporation vs. Mr. Biju Radhakrishnan. 2010 LLR 846 (Kerala HC)

Architects firm will not be covered under ESI Act.

Pithavadian & Partners vs. Deputy Director, Regional Office (Tamil Nadu), Employees' State Insurance Corporation. 2010 LLR 809 (Madras HC)

When an appeal against the order of Employees' Insurance Court has been filed by the ESIC after nearly about three years, the same will be liable to be dismissed.

Employees' State Insurance Corporation vs. Rainbow Surgical Dressing. 2010 LLR 1023 (Guj. HC)

ESI demand for recovery of contributions rightly set aside when ESIC failed to establish that documents produced by the employer were not genuine.

Employees' State Insurance Corporation, Bangalore and Another vs. Swathi Packaging Private Ltd., Bangalore. 2010 LLR 999 (Karn. HC)

Delay in filing of appeal in the High Court against the order of the Employees' Insurance Court can be condoned by Limitation Act whereas delay in filing petition before the Employees' Insurance Court is not permitted since the Court is not empowered to condone the delay.

Upendra Jena vs. Regional Director, Employees' State Insurance Corporation, Janapath, Bhubaneswar and Another. 2010 (2) LLN 300 (Orissa HC)

ESI authorities have no power to re-open the matter once contribution amount for a particular year is determined.

M/s. National Polyplast (India) Ltd. vs. Deputy Director, Regional Office (Tamil Nadu), Employees' State Insurance Corporation. 2010 LLR 1106 (Madras HC)

Order passed by ESI authority under sec. 45-A will not be legal in the absence of necessary proof of participation of employer in proceedings.

Regional Director, Employees' State Insurance Corporation, Patna and Anr. vs. Gopal Prasad@ Gopal Prasad Singh, s/o Late Sri Raghubansh Prasad Singh, Patna. 2010 III CLR 622 (Patna HC)

Appeal, not writ petition is the proper forum when an employer is aggrieved by the findings of ESI Authority.

Shivam Enterprises vs. Employees' State Insurance Corporation & Anr. 2010 LLR 1174 (Raj. HC)

When five establishment run by sons and sixty are by father employing 52 employees from the same cabin having functional integrality rightly clubbed for coverage under E.S.I.

Gopi Chand and ors. vs. E.S.I.C. 2010 LLR 1277 (Delhi HC)

'Shop' does not only mean a place where goods are sold on retail. It includes premises where employees are employed and services are rendered. Coverage under ESI of loading & unloading contractor with international Airport Authority under 'shop' is legal.

ESIC vs. Sea Hawk Cargo Carriers Pvt. Ltd. 2010 LLR 1280 (Delhi HC)

Mere situation of regional office of ESIC will not confer jurisdiction on Court. Here Cr. P.C. Provisions will apply for court jurisdiction.

Raj Kumar Gupta vs. State of Bihar. 2010 LLR 1286 (Patna HC)

EMPLOYEES COMPENSATION ACT

If a workman suffers 25-50% disability in an accident, it will be treated as total disablement.

New India Assurance Company Ltd. vs. A. Narsimhulu and Another. 2009 LLR 1293 (AP HC)

When died due to fall from staircase, dependents will be entitled to compensation.

Regional Director, ESIC vs. Hasinaben Azizbhai Shaikh & Ors. 2009 Lab. IC 4151 (Guj. HC)

Daughter of claimant when fell down from stair of the hospital & died, will not be entitled to compensation under WC Act being not in the employment of the hospital but was under treatment of TB.

Thangammal vs. Management, OBLI Hospital, Salem. 2010 LLR 18 (Madras HC)

When driver was hijacked and his death is presumed, dependents will be entitled to compensation.

New India Assurance Co. Ltd. vs. Surendra Patra & Ors. 2009 Lab. IC 3995 (Orissa HC)

When employer-employee relationship is established, compensation rightly awarded. No interference required from H.C. in the absence of substantial question of law.

Oriental Insurance Company Ltd. vs. N. Sarojini & Ors. 2010 LLR 143 (AP HC)

There is no bar for the W.C. Commissioner to award more compensation than claimed.

Oriental Insurance Co. Ltd. vs. N. Sarojini and Others. 2009 (123) FLR 892 (AP HC)

LABOUR Judgments



When commissioner directly decided about the entitlement of compensation, H.C. intervention not required.

National Insurance Co. Ltd. vs. Smt. Manisha Changan Karande and Others. 2009 (123) FLR 475 (Bom. HC)

Employer is liable to pay compensation from the date of accident and not from the date of order under W.C. Act.

Sarbeswar Bhunimali @ Sarbeswar Bhunimali @ Bapi Bhunimali vs. Ardhendu Kumar Roy and Another. 2009 (123) FLR 1084 (Cal. HC)

In the case of leg amputation, 100% loss of earning capacity will be presumed under W.C. Act.

National Insurance Company vs. Pappu & Anr. 2010 LLR 224 (Del. HC)

When driver died after one month of receiving injuries on duty, dependents will be entitled to be compensation.

United India Insurance Company Ltd., Chennai vs. Sivagami and Others. 2010 LLR 135 (Madras HC)

When necessary safeguards were not provided by the employer and the accident arose during course of and out of employment, compensation has been rightly awarded by the Commissioner under the Workmen's Compensation Act.

Sellammal Spinning Mills Pvt. Ltd., Annur vs. Bannari and Another. 2009 IV LLJ 800 (Mad. HC)

Mere death of a workman in his ordinary course of employment cannot make the employer liable for payment of compensation under Workmen's Compensation Act.

D.S. Constructions Ltd. vs. Raj Kali Devi. 2010 LLR 316 (Del. HC)

Death after chest pain developed during duty would be accident under WC Act.

Management of HAL, Helicopter Division, Bangalore vs. L. Fathima Mary (Smt.) and Ors. 2010 LLR 257 (Karn. HC)

45% disability of driver would be total disablement for compensation under WC Act.

New India Assurance Co. Ltd. vs. S. Ambagowda @ Ramesh and Another. 2010 LLR 388 (AP HC)

Ex-gratia payment already made to dependants of deceased will not be considered as compensation under WC Act.

New India Assurance Co. Ltd. Rep. by its Deputy Manager vs. B. Lalitha (smt.) and Ors. 2010 LLR 440 (AP HC)

No compensation when workman met with an accident one Km. away while going back to home after duty under WC Act.

United India Insurance Co. Ltd. vs. Nandkumari Ajaykumar Tiwari. 2010 LLR 393 (Bom. HC)

High Court will not interfere in WC case when there is no substantial question of law is involved.

Pradeep Naik, Goa vs. Yesso Tulshidas Naik, Goa. 2010(124) FLR 622 (Bom. HC)

For fastening liability on the employer some casual connection between employment and death has to be shown.

D.S. Construction Ltd. vs. Raj Kali Devi. FLR (124) 2010 P. 485 (Delhi HC)

Exgratia payment made by employer can not be a part of compensation under W.C. Act.

Jamnagar Municipal Corporation vs. Rajesh Laljibhai Kabira Through Prabhaben Rajeshbhai and 6 Ors. 2010 II CLR 10 (Guj. HC)

Commissioner under the Workmen's Compensation Act has similar powers as vested in the Civil Court and can summon the doctor and also enforce his attendance to be a witness.

Rama alias Ramaiah vs. M/s. New India Assurance Co. Ltd., Bangalore and Anr. 2010 LLR 519 (Karn. HC)

A trainee is an employee and the journey undertaken by him from his house to work place is in the course of his employment.

Tamil Nadu S.R.T. Corporation vs. Smt. Shiv Kumari & Ors. LLN(1) 2010 P. 414 (Madras HC)

An insured person cannot claim compensation under the Workmen's Compensation Act for employment injury sustained by him.

Regional Director, ESI vs. Bhopa Ram & Ors. CLR I 2010 P. 655 (Raj. HC)

When dead body of Chowkidar found at workplace, it will be presumed as employment injury under WC Act.

Regional Director, ESI Corporation vs. Shakeena Bibi Munarashkhan Pathan and another. 2010 LLR 667 (Guj. HC)

When there is difference of date of accident in medical certificate & complaint, compensation will not be payable.

Divisional Manager, National Insurance Co. Ltd., Bangalore vs. Shivu & Anr. 2010 Lab IC 1415 (Karn. HC)

LABOUR Judgments



Even if the workman was attacked due to personal rivalry, would be deemed accident during the course of employment. Compensation rightly awarded.

Orient Insurance Co. Ltd. vs. Abdul Salim @ P.A. Salim and Anr. 2010-II LLJ 461 (Kerala HC)

Insurance company is not liable to bear the burden of penalty awarded by WC Commissioner.

United India Insurance Company Ltd. vs. Bhanwariya & Others. 2010 LLR 720 (Raj. HC)

Direct payment by corporation to the deceased widow can't be a part of compensation amount or adjusted against the award by WC Commissioner.

Jamnagar Municipal Corporation vs. Rajesh Laljibhai Kabira through Prabhaven Rajeshbhai and Six Others. 2010 LLR 839 (Guj. HC)

Mother of the deceased, when re-married, would not be deemed to be dependent upon the son for claiming compensation under the Workmen's Compensation Act.

Rudramma vs. Marijogaiah and Others. 2010 LLR 845 (Karn. HC)

When driver's disability is assessed by doctor as 67%, WC Commissioner rightly assessed as 100% loss of earning capacity.

Divisional Manager, New India Assurance Co. Ltd., Bangalore vs. Nagaraj and Anr. 2010 LLR 867 (Karn. HC)

Provision of depositing amount of compensation before filing appeal under WC Act is not ultra virus of constitution.

Sevak Ram Patidar vs. Union of India. 2010 Lab IC 1964 (MP HC)

WC Commissioner being vested with the power of civil court can make investigations.

Mahaliyman Temple Trust vs. Commissioner For Workmen's Compensation-Cum-Deputy Commissioner of Labour, Coimbatore and Others. 2010 LLR 883 (Mad. HC)

In the absence of any clause of non payment of interest, insurance company will be liable to pay the same on delayed payment of accident compensation.

Ajay vs. Balwan Singh and Another. 2010 LLR 814 (Punjab & Haryana HC)

Before penalty is imposed under WC Act, employer is required to be heard.

Navdeep Agro Board, Ram Nagar, Sirsa vs. National Insurance Co. Ltd., Sirsa and Others. 2010(125) FLR 773 (Punjab & Haryana HC)

Neither employer nor the insurer will be liable to pay compensation to the dependents of the deceased workman who died on Sunday i.e. weekly off day and as such the alleged injury did not accrue during the course and out of the employment.

State of Gujarat and Others vs. Fattu Faku Bhuriya and Others. 2010 LLR 1022 (Guj. HC)

Compensation not be granted where claimants failed to establish that death was during and in the course of employment.

Smt. Baby and Others vs. Smt. Sheela Jalan and Another. 2010 LLR 1001 (Karn. HC)

Appeal beyond limitation period against WC Commissioner award not maintainable.

Maharashtra Freight Carriers Pvt. Ltd. vs. Kusum Lata & Ors. 2010 LLR 1053 (Del. HC)

Compensation to be paid under WC Act when employee was injured due to biting by mad dog in the office. It amounts to accident during the course and out of employment.

Executive Engineer and Anr. vs. Kalawati and Others. 2010 LLR 1062 (MP HC)

Claimants of deceased can file the case under Employees Compensation Act either at the place where they reside or where accident took place.

Oriental Insurance Co. Ltd., through Its Divisional Manager, Allahabad vs. Smt. Gajendri Devi and Others. 2010 LLR 1181

Death on account of quarrel with the other workman will amount to accident during and arising out of employment. Compensation rightly awarded.

Union of India, Thru G.M., Northern Railway & Anr. vs. Ifzal Hussain & Anr. 2010 LLR 1235

Manufacturer is responsible to pay compensation to the deceased dependents, who was driver and died during giving demo of tractor in the show room of the dealer. However, manufacturer can recover the amount from the dealer.

Mahindra Gujarat Tractor Ltd., Vadodara vs. Shabana, Wife of Abdul Rauf Pathan and Others. 2010 LLR 1187

Delay in filing the claim under EC Act will not be condoned.

United India Insurance Company Ltd., through Regional Office vs. Kadar Harun Changda & 2 Ors. 2010 LLR 1227

LABOUR Judgments



Penalty for delayed payment of compensation can't be imposed on insurance company.

United India Insurance Company Ltd., Jodhpur vs. Kachra & Ors. 2010 LLR 1230

In the absence of stress while performing duty, death due to heart attack will not attract compensation under E.C. Act.

Oriental Insurance Co. Ltd. vs. Bimla Devi. 2010 LLR 1249 (H.P.H.C.)

FACTORIES ACT

When providing canteen is a statutory obligation under Factories Act, canteen workers will be employees of the factory management.

M/s. ICI India Ltd. vs. State of U.P. and Others. 2009 (123) FLR 996 (Alla. HC)

In the absence of proof of employment of 250 workmen, criminal case against employer for not providing canteen under factories Act will not sustain.

State of Gujarat vs. Mulrajibhai G. Udeshi. 2010 LLR 148 (Guj. HC)

Manager can't be prosecuted for death of a contractor worker when he was not an occupier under Factories Act. However, a worker engaged through the contractor in a factory will also be treated as a worker under the Factories Act.

H Dutta @ Hiramanya Dutta vs. State of Jharkhand and Another. 2010 LLR 504 (Jharkhand HC)

Overtime payment to the workers, for working on holidays, would be tenable when there was sufficient proof in support of working beyond duty hours.

Ramkhalawan S/o Ramprasad Gupta (Since dead) by L.Rs., Madanlal R. Gupta and Others vs. Model Mills, Nagpur. 2010 LLR 574 (Bom. HC)

Workers working in hospital/ dispensary of India security press Nasik being in nature of incidental and connected with manufacturing process would be entitled to over time under provisions of Factories Act.

Union of India and Another vs. Arun Vithal Bonde and Others. 2010 (125) FLR 542 (Bom. HC)

Prosecution for violation of safety provisions under Factories Act causing fatal accident can be done only under Factories Act and not under IPC.

Rabindra Agarwal vs. State of Jharkhand and Another. 2010 LLR 1058 (Jharkhand HC)

Canteen run under Factories Act will not be 'eating house' for the purpose of getting license under Mumbai Municipal Corporation Act.

Bharat Petroleum Corporation Ltd. & Anr. vs. State of Maharashtra & Ors. 2010 III CLR 635 (Bom. HC)

JHARKHAND HIGH COURT

Water treatment plant in mining area and in relation to mine is not a 'factory'.

Central Coal Fields Ltd. vs. State of Bihar & Anr. LLJ IV 2009 P. 774 (Jharkhand HC)

Production of quality seeds with the involvement of human element will amount to manufacturing process and will be covered under Factories Act.

Lal Bahadur vs. State of Haryana & Ors. 2010 LLR 980 (Punjab & Haryana HC)

FIXED TERM APPOINTMENT

No reinstatement of employee whose employment contract was not renewed.

New Delhi Municipal Council vs. Shri Dori Lal. 2010 LLR 303 (Del. HC)

Petitioner was entitled to one month's notice of termination even though his appointment was for a specific period.

Dinkar Baliramji Bundale vs. Presiding Officer, School Tribunal, Amravati. LLN(1) 2010 P. 418 (Bom. HC)

Even when the workman was not given contractual appointment but in view of the fact that he was working on the contract and it came to an end, his termination will not be treated as retrenchment.

Sumer Singh vs. The Chief Conservator of Forest, Haryana and Others. 2010 LLR 482 (Punjab & Haryana HC)

When the post is of permanent nature, fixed term contract of three months and its repeated renewals for years together, will not attract sec. 2(oo)(bb) of ID Act in case of termination. Worker will be entitled to compensation.

Pappu vs. Management of M/s Rajiv Automobiles Workshop and Show Room and Another. 2010 LLR 787 (Del. HC)

Discharge of service of workman due to expiry of the term of the employment contract even pending conciliation proceedings will not attract sec. 33 of the ID Act.

LABOUR Judgments



BA Security Agents Employees Union vs. Regional Labour Commissioner & Ors. 2010 LLR 1083 (Del. HC)

Fixed term appointment of 3 years when not renewed would not be retrenchment.

Ram Kishan vs. Management of M/s. American Express Banking Corporation & Anr. 2010 LLR 247 (Del. HC)

Compliance of Sec. 25F of ID Act is not required in the case of termination when appointment was for a limited period.

Gujarat Water Supply and Sewerage Board and Anr. vs. Bipinchandra N. Ramanuj. 2010 LLR 1167 (Guj. HC)

Termination due to non renewal of contract does not come within the purview of retrenchment.

Express Publications (Madurai) Ltd. vs. K. Daglas and Another. 2010 LLR 1023 (Kerala HC)

GRATUITY

Employees of seasonal establishment are also entitled to gratuity and it is for the employer to prove their non continuous working.

M/s. Maliana Co-operative Cane Development Union Ltd., Meerut vs. Tej Ram Sharma and Others. 2010 LLR 26 (All. HC)

If higher gratuity is available by virtue of settlement between union and management, it can't be overruled by Payment of Gratuity Act.

SAIL Ex-Employees' Association vs. Steel Authority of India Ltd and Anr. 2009 LLR 1312 (Delhi HC)

No amount of gratuity can be adjusted / forfeited against the dues of the employee except on the grounds available under sec. 4(6) of the Payment of Gratuity Act.

Harrisons Malayalam Ltd. vs. Balan. 2009 (123) FLR 862 (Kerala HC)

An employee will be entitled to gratuity for the intervening period of dismissal and his reinstatement.

Mohd. Shareefuddin vs. Regional Manager, A.P.S.R.T.C., Secunderabad City Region. 2010 LLR 255 (AP HC)

Recovery of penalty from gratuity without holding enquiry would be illegal.

Dhanaykumar Chitriappa Bodale vs. Managing Director, Maharashtra State Electricity Distribution Company Ltd. & Ors. 2010 LLR 311 (Bom. HC)

The controlling Authority can lay down its own procedure for determining the gratuity of an employee and can decide all the issues together instead of deciding the preliminary issue at the first instance.

Oil and Natural Gas Corporation Ltd. vs. Rukhmani S. Awale (Smt.) and Anr. 2010 LLR 314 (Bom. HC)

Gratuity of an employee can be forfeited only when he is dismissed from service for the misconducts as prescribed under the Gratuity Act.

U.P. State Road Transport Corporation vs. Appellate Authority and Ors. 2010 LLR 259 (Uttarakhand HC)

Even when a guarantor for loan has agreed that the amount of loan, if not paid can be recovered from terminal benefit, it cannot be recovered from gratuity and provident fund.

Kunju Mohammed vs. Kerala State Financial Enterprises Ltd. 2010(1) KLT 56 (Kerala HC)

Casual workers are also entitled for Gratuity.

Divisional Personnel Officer, Southern Railway, Palghat vs. Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central) and Ors. 2010 LLR 414 : CLR 1 2010 P. 677 (Madras HC)

Employee in seasonal establishment could get gratuity at the rate of 7 days wages for each season.

Maliana Co-operative Cane Development Union Ltd. Meerut vs. Tejram Sharma & Ors. LLJ 1 2010 P. 738 (All. HC)

PG school of advance teaching being establishment under shop act will be covered by the payment of Gratuity Act.

Institute of Economic Growth vs. Controlling Officer under the Payment of Gratuity Act & Anr. 2010 LLR 536 (Del. HC)

No forfeiture of gratuity can be made on the ground of employee's unauthorized absence.

Uttar Pradesh S.R.T. Corporation vs. Appellate Authority & Ors. LLN (1) 2010 P. 685 (UP HC)

Institute of economic growth even though a society, would be covered under Delhi Shops Act by the definition of commercial establishment and consequently payment of gratuity act would also apply.

Institute of Economic Growth vs. Controlling Officer, Payment of Gratuities Act and another. 2010(125) FLR 560 (Del. HC)

Any person having ultimate control over the affairs of the mine would be employer for the purpose of payment of gratuity act irrespective of any designation.

J. Kumar And Another vs. State of Jharkhand and Another. 2010 LLR 668 (Jharkhand HC)

LABOUR Judgments



Daily wagers and break in service workers will also be entitled to Gratuity.

Ahmedabad Municipal Corporation vs. Kantibai Hirabhai & 2 Ors. 2010 LLR 712 (Guj. HC)

Payment of Gratuity Act is applicable to Gujarat Industrial Development Corporation.

Gujarat Industrial Development Corporation, Gandhinagar vs. Pranjivan H. Chavda. 2010 (125) FLR 759 (Guj. HC)

Interest @ 12% will be payable on delayed payment of gratuity by the employer even when the employee has not made a claim for the same.

U.P.S.R.T.C. Through Its Managing Director and Others vs. Mohd. Rais Khan. 2010 LLR 887 (All. HC)

Gratuity can't be withheld on the basis of an enquiry sought to be initiated for some misconduct.

Dhairyasheel A. Jadhav vs. Maharashtra Agro. Industrial Development Corporation Ltd. 2010 LLR 792 (Bom. HC)

Withholding Gratuity because CBI case is pending against employee will be contrary to the provisions of gratuity Act.

Rajnagar Textile Mills vs. Gunvant Lalchanddas Kayastha. 2010 LLR 869 (Guj. HC)

'Trust' or 'society' would be covered under Payment of Gratuity Act.

Amravati Nagar Vachanalaya, Amravati vs. State of Maharashtra, through Secretary, Ministry of Labour, Mumbai (Mantralaya) & Ors. 2010 II CLR 942 (Bom. HC)

Sick Industrial Companies (Special Provisions) Act (SICA) will not debar when the gratuity has not been paid by the employer.

Akshaya Textiles Ltd., Coimbatore vs. Tahsildar, Coimbatore North Taluk, Coimbatore and Others. 2010 LLR 1024 (Mad. HC)

Gram Panchayat being an establishment, would be covered under Payment of Gratuity Act.

Gram Panchayat, Shivad vs. Rang Lal and others. 2010 II CLR 844 (Raj. HC)

Section 14 of the Payment of Gratuity Act has an over-riding effect over other enactments.

M.D./Member Secretary, U.P. Co-Operative Union vs. Appellate Authority (Payment of Gratuity Act) and Others. 2010 LLR 1119 (All. HC)

Principal employer is not liable to pay gratuity to the contractor workman.

Sailen Seth vs. Deputy Labour Commissioner & Ors. 2010 LLR 1070 (Cal. HC)

Delhi Development authority is an establishment under Payment of Gratuity Act.

Delhi Development Authority vs. Kundan & Ors. 2010-II LLR 961 (Del. HC)

When employee claim for gratuity not entertained under central civil services (pension) rules 1972, he will be entitled for gratuity under Gratuity Act being served the post office as chowkidar for 18 years. Post office held as establishment.

Union of India and Anr. vs. Bhagat Ram. 2010 LLR 1091 (Himachal Pradesh HC)

Gratuity can't be forfeited without determining the loss caused by the misconduct of the employee.

Karnataka Vidyuth Karkhane Ltd., Bangalore vs. N.S.S. Bhagavat and Ors. 2010 LLR 1170 (Karn. HC)

In case of conflict, provisions of Gratuity Act would prevail over any other enactment, regulations or Act.

Shambhu Sharan Singh S/o. Late Jagdish Narayan Singh vs. Chairman and Managing Director UCO Bank and Ors. 2010 III CLR 616 (Patna HC)

Payment of Gratuity Act does not allow any employer to curtail the rights of employee.

Steel Authority of India Limited vs. Taraknath Sengupta and Others. 2010 LLR 1017 (Cal. HC)

In the absence of any proof of misappropriation, retiral benefits can't be with-held.

Rishi Kumar Ekka vs. New India Assurance Co. Ltd. and Others. 2010 LLR 1169

Gratuity rightly forfeited of Bank employee who caused losses to Bank to an extent of Rs. 149/- lakhs.

Ramchandra S. Joshi vs. Bank of Baroda. 2010 LLR 1255 (Bom. HC)

Notification exempting Local Body from payment of Gratuity Act will be effective prospective and employees appointed before will be entitled for gratuity.

Krishna Lal Agarwal vs. State of Punjab. 2010 LLR 1268 (P& H HC)

No deemed exemption from payment of Gratuity Act unless clearly notified under Sec. 5 of the Act.

Municipal Council, Udaipur vs. Mohd. Safi. 2010 LLR 1269 (Raj. HC)

LABOUR Judgments



I.D. ACT

Ex-parte proceedings against employer under ID Act would not be proper simply because he refused to take delivery of the notice sent under Reg. AD post. ID rules also require posting of notice under UPC.

Sri Sathya Sai Vidya Vihar vs. Rati Ram. 2010 LLR 85 (Delhi HC)

When extension of employment was on specific stipulation of being reengaged till regular employee was appointed, no right under sec. 25-H of ID Act created for the workman.

Tarsem Lal vs. Haryana Land Reclamation And Development Corporation Ltd. and Others. 2010(124) FLR 100 (Punjab & Haryana HC)

A daily wage can't be said to be working on holidays for the purpose of 240 days calculation.

Sh. Ram Gopal vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad and Others. 2010 (124) FLR 276 (Punjab & Haryana HC)

Doing own business is not covered by the term of gainful employment.

State of Rajasthan vs. Rajendra Prasad & Anr. LLN (4) 2009 P. 781 (Raj. HC)

When the Union has submitted that the General Secretary be declared a 'protected workman', the employer has a mandatory obligation to do so.

HLL Life Care Ltd. vs. Hindustan Latex Labour Union (AITUC) & Anr. 2010 LLR 544 (Kerala HC)

Effecting change in working hours from 6 to 8 for new recruits after taking their consent will not attract sec. 9A of the ID Act.

Transport and Dock Workers Union and Others vs. Mumbai Port Trust and Another. 2010(125) FLR 507 (Bom. HC)

Where workman has two remedies- one in Delhi School Act and other in ID Act to challenge his termination, he can invoke any one.

Apeejay School vs. Sh. Darbari Lal & Ors. 2010 LLR 1015 (summary) (Del. HC)

Conciliation Officer, on failure of the negotiations, is not empowered to direct the appellant to approach Labour Court under section 33C(2) of the Industrial

Disputes Act since it will be violative of mandatory provisions.

Y.K. Kumaraswamy vs. Secretary to Government, Department of Labour, Bangalore and Another. 2010 LLR 1022 (Karn. HC)

Closure will be inoperative when prior permission from Govt. not obtained under sec. 25 (o) of the ID Act.

Sri Arunachaleswarar Mills vs. Joint Secretary, Department of Industries and Labour Secretariat, Fort St. George, Chennai & Ors. 2010 LLR 641, 2010 (125) FLR 436 (Mad. HC)

Introduction of computerised Attendance System does not require compliance of sec. 9-A of I.D. Act.

Hindustan Unilever Employees Union, Pondicherry vs. Inspector of Factories, Pondicherry and Ors. 2010 II CLR 756 (Mad. HC)

ID Act does not provide any method to recover the excess amount paid to employee from him.

Haryana State Co-Operative Supply and Marketing Federation Ltd., Chandigarh vs. Labour Court, Union Territory, Chandigarh. 2010 LLR 889 (Punjab & Haryana HC)

When an industrial establishment has been closed, the relationship of employer and employee comes to an end hence section 25H of Industrial Disputes Act, providing for re-employment of retrenched workmen, has no application.

Somayya S. Bhandari & Ors. vs. Oriental Rubber Industries Ltd. 2010-II CLR 934 (Bom. HC)

Since head office of National Seeds Corporation exercises administrative control over the workman, his dispute is to be adjudicated by tribunal at Delhi, no matter the casual workman was engaged at Bareilly or Bhopal.

Mahipal Singh (Sh.) vs. Presiding Officer, Industrial Tribunal-III & Ors. 2010 LLR 1054 (Del. HC)

When workman proved of his working for more than 240 days, it is for employer to rebut. In case of failure, adverse inference will be drawn against employer.

Sanjay Kumar S/o Surendra Kumar Sharma vs. Chief Executive Officer, Janpad Panchayat, Ratlam. 2010 LLR 1065 (MP HC)

Giving notice for increasing work hours under Factories Act will not absolve the employer from giving notice under Sec. 9A of the ID Act. Without this compliance change in service conditions would be illegal.

Union of India through the Secretary, Government of India, Ministry of Finance, Deptt. of Economic Affairs, New Delhi & Ors. vs. Workmen through the General Secretary of the India Security Press and Currency Note Press Staff Union & Anr. 2010 LLR 1183 (Bom. HC)

LABOUR Judgments



Without proving 240 days working in a preceding year before termination, Industrial Disputes Act is not attracted.

Divisional Railway Manager, Western Railway, Kota vs. Judge, Industrial Tribunal (Central), Kota & Anr. 2010 LLR 953 (Raj. HC)

While calculating 240 days for continuous service, the training period of a workman will also be counted when the service was uninterrupted inclusive of training.

Smt. Neelam vs. Presiding Officer, Labour Court-I, Faridabad and Another. 2010 LLR 510 (Punjab & Haryana HC)

Labour Court has to first decide about the fairness of the enquiry as preliminary issue.

Superintending Engineer vs. M.K. Vasu. 2010 LLR 1265 (Mad. HC)

Employer to pay last drawn wages as interim relief to workman, when his reinstatement award is challenged in HC.

J.K. Industries v. Upendra Chaudhry. 2010 LLR 1270 (Cal. HC)

High Court not to interfere when Labour Court allowed regularisation of 113 ad-hoc employees.

Bhuvaneshwar Development Authority vs. B.D.A. workers union. 2010 LLR 1276 (Orissa HC)

It is not the court but for the employer to create a permanent post.

State of UP vs. Industrial Tribunal IV, Agra. 2010 LLR 1285 (All. HC)

No approval for dismissal under Sec.33(2)(b) of I.D. Act on account of unauthorised absence, when workman submitted leave applications with medical certificates from time to time.

Delhi Transport Corporation vs. Sh. Bhanwar Lal. 2010 LLR 1289 (Del. HC)

For reference, Govt. has not examine where industrial dispute subsists. Rejecting reference on the ground that worker did not participate in the enquiry will be illegal.

Bhanwar Singh v. Govt. of India. 2010 LLR 1293. (Raj. HC)

INDUSTRY

When forest department is not 'industry', labour court order of reinstatement will be *ex facie* illegal.

State of Uttarakhand and Anr. vs. Jagat Singh Sirola and Anr. 2010 LLR 125 (Uttarakhand HC)

Army auditorium would be industry under ID Act.

Field Marshal Manekshaw Auditorium and Another vs. Presiding Officer, Labour Court, Ambala and Another. 2010 LLR 258 (Punjab & Haryana HC)

Diocese of Amritsar of the Church of North India will not be an 'industry' under the Industrial Disputes Act.

Diocese of Amritsar of the Church of North India and Ors. vs. Buta Anayat Masih and Ors. 2010 LLR 407 (Punjab & Haryana HC)

Production of quality seeds activity by the management will be sufficient to bring it within the definition of industrial establishment under the provisions of ID Act.

Lal Bahadur vs. State of Haryana and Others. 2010 LLR 484 (Punjab & Haryana HC)

INDUSTRIAL DISPUTE

Approval for dismissal must be given when enquiry is found to be fair and proper.

Delhi Transport Corporation vs. Shri Gajender Pal Singh. 2009 LLR 1287 (Delhi HC)

When there exists an industrial dispute, the Assistant Commissioner of Labour is bound to admit it in conciliation.

Navbharat Press Employees Union vs. State of Maharashtra, Labour Industries & Energy Department. CLR III 2009 P. 782 (Bom. HC)

When workman says that he was refused to take on duty and employer says that there was no relationship of employer and employee, Industrial Dispute will come in to existence and reference can be made.

Jagadamba Motors and Anr. vs. State of West Bengal and Ors. 2010 LLR 23 (Cal. HC)

When after retrenchment employer enters into a settlement with retrenched employee that they will gradually absorbed, violation of such settlement would be a subject matter of industrial dispute.

Eastern Coalfields Ltd. vs. Union of India and Others. 2009 (123) FLR 1088 (Cal. HC)

The object of Industrial Disputes Act is to ensure harmony between the employer and employees.

Chemplast Employees' Union vs. Government of Tamil Nadu. CLR III 2009 P. 926 (Mad. HC)

Withdrawal of VRS application does not come under

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Industrial Dispute.

Employer in Relation to the Management of Jamadoba Colliery of M/s. Tata Iron and Steel Co. Ltd. vs. Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad and Another. 2010 (124) FLR 327 (Jharkhand HC)

High Court should not entertain an industrial dispute directly since appropriate remedy is available under ID Act.

Ashoke Kumar Mukherjee vs. Eastern Coalfields Ltd. & Ors. 2010 LLR 426 (Cal. HC)

Industrial dispute can be raised when settlement about reinstatement is not implemented by employer.

Valliammal vs. Block Development Officer, (Village Panchayat) and Ors. 2010 LLR 402 (Madras HC)

Reducing leave from 32 to 18 will attract notice under sec. 9A of the ID Act. Mere display of notice will not be sufficient compliance of the section.

Management of Salem District Coop. Milk Producers Union Ltd. vs. Presiding Officer, Industrial Tribunal, Chennai & Anr. 2010 LLR 435 (Madras HC)

Conciliation Officer u/s. 12 of the I.D. Act has no power to adjudicate and decide on merits of dispute.

Ramesh S. & Ors. vs. Commissioner of Labour, Chennai. LLJ I 2010 P. 348 (Madras HC)

Over Time can't be claimed under sec. 6H(2) of UP ID Act when claim is disputed.

Rana Pratap Singh vs. Labour Court & Others. 2010-I CLR 916 (All. HC)

Issue of recognition of union by employer can't be a subject matter of Industrial Dispute under ID Act.

Puducherry Shasun Chemicals and Drugs Niruvana Thozhilalargal Muneerta Sangam and Another vs. Labour Officer and Others. 2010 LLR 498 (Madras HC)

Dispute raised after 16 years rightly assumed as no dispute by conciliation officer.

Deena Nath vs. Regional Conciliation Officer (Labour Department) Police Lines, Gorakhpur And Others. 2010(126) FLR 680 (All. HC)

Govt's reference under 36A of the ID Act to remove doubt or difficulties arising out of any settlement or award will be an Industrial Dispute.

All India Women's Conference vs. Raj Karan and Another. 2010 LLR 1111 (Del. HC)

Industrial Dispute can only be raised at the place where services of the workman are terminated.

T.V. Swamy vs. (1) Management of Best & Crompton, Madras (2) Presiding Officer, I Additional Labour Court, Chennai. 2010 LLR 1045 (Madras HC)

COURT POWERS / SEC. 11-A

Courts should not exercise its jurisdiction under sec. 11-A of I.D. Act to help dishonest employee by awarding them reinstatement.

Pepsu Road Transport Corporation, Patiala, through its Managing Director vs. Presiding Officer, Labour Court, Patiala and Anr. 2010 LLR 152 (Punjab & Haryana HC)

No relief for the employer when ex-parte award was challenged after about five years.

Price Water House Coopers Pvt. Ltd., Kolkata vs. Second Labour Court, West Bengal and Others. 2010 LLR 939 (Cal. HC)

The Industrial Tribunal/Labour Court has to confine its jurisdiction to the terms as referred for adjudication hence the question as to justifiability of increase of the task of sweepers from 30 to 60 units was not an issue for adjudication and as such the Award is liable to be set aside.

Tata Tea Limited, Regional Office vs. General Secretary, Devicolam, and Others. 2010 (126) FLR 53 (Kerala HC)

Dismissal of reference by court due to absence of workman will not amount to award under ID Act.

Rajan Shrikrishna Morya vs. Marshal Security Pvt. Ltd. 2010 III CLR 633 (Bom. HC)

Labour Court has no jurisdiction to decide the issue of employer-employee relationship.

Bhaskar J. Vaidya vs. Member, Industrial Court, Amravati. CLR I 2010 P. 555 (Bom. HC)

Once court records the finding of workman guilt and dismissal not excessive, cannot go further and interfere with the punishment.

Tata Press Employees Union vs. Tata Informedia Ltd. and another. 2010(125) FLR 514 (Bom. HC)

Court / Tribunal to modify the punishment given by employer only when it is shockingly disproportionate to the charges.

Divisional Controller vs. Girdharbhai Thakarshibhai Tank. 2010 LLR 600 (Guj. HC)

Government and not the Labour Court has to decide revision of pay scales and other allowances for the casual

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farm workers.

Central Silk Board Employees' Union, Bangalore vs. Management of Central Silk Board, Bangalore and Another. 2010 LLR 757 (Karnataka HC)

REFERENCE

Jewel Appraiser, having not been held as a workman by the Supreme Court, will not be entitled to regularisation, hence the appropriate government should have passed an order while declining to refer the dispute for adjudication.

All Bank Appraisers' Federation, Tamil Nadu (represented by its General Secretary Sri K. Vijayarangan), Cuddalore vs. Government of India, Ministry of Labour, New Delhi and Ors. 2009 (4) LLN 358 (Mad. HC)

High Court will not interfere with the order of the appropriate government in rejecting to refer the dispute as raised by the workmen twice since no new material or reasons have been given for interference.

Pune Labour Union vs. State of Maharashtra, Industrial Energy And Labour Deptt. and others. 2010(124) FLR 630 (Bom. HC)

Before making a reference the Government must form an opinion as to the status of the employees and whether there exists an industrial dispute.

A.P. Paper Mill Ltd. Rajahmundry vs. Government of Andhra Pradesh & Ors. CLR I 2010 P. 384 (AP HC)

Being fact of employer-employee relationship in dispute, reference is bad in law, moreso when made by State Govt. when it was not appropriate Govt.

Hindustan Cable Ltd., Allahabad vs. Presiding Officer, I.T.-I Allahabad and Others. 2010 II CLR 863 (All. HC)

Existence of industrial dispute is a must for any difference in case of settlement on the point of reference. Question of validity has to be decided as preliminary issue by the court.

Siemens Ltd. vs. Their Employees Represented by Siemens Workers' Union and Another. 2010 LLR 934 (Bom. HC)

Lay off permission dispute reference will not be illegal.

L.M. Glasfiber India (Private), Ltd. vs. State of Karnataka and Another. 2010 (3) LLN 854 (Karn. HC)

The Govt. is not expected to refer each and every matter mechanically in a routine matter. Govt. has to satisfy

herself about existence of Industrial Dispute.

United Labour Federation, Chennai vs. Government of T.N. rep. by its Secy., Dept. of Labour & Employment, Chennai & Ors. 2010 III CLR 651 (Mad. HC)

Refusal to make a reference of industrial dispute involving disputed question of fact by the appropriate Government is not proper.

Coimbatore Cement Workers Union v. Management of ACC Ltd. & Ors. LLN (3) 2010 P. 505 (Mad. HC)

Unless the person seeking reference proves his status as a workman, refusal by the Government to refer the matter for adjudication cannot be challenged.

Prakash M. v. Secretary to Government of India, Ministry of Labour. LLJ III 2010 P. 725 (Mad. HC)

On a dispute, Govt. can't decide whether applicant is a workman or not. Dispute has to be referred to the court.

Hindustan National Glass & Industries Ltd. vs. Deputy Labour Commissioner, Garhwal Region, Dehradun & Anr. 2010 LLR 1178 (Uttarakhand HC)

Govt. can't refuse to refer the dispute merely on the ground that the employee was engaged on contract basis.

Satish vs. Union of India and Others. 2010 LLR 474 (Bom. HC)

INTERIM RELIEF

When employer-employee relationship is not established, interim relief under sec. 17-B of I.D. Act can't be awarded.

Carrit Moran and Company (P) Ltd. vs. State of West Bengal and Ors. 2010 LLR 126 (Cal. HC)

Last drawn wages will be payable as interim relief under sec. 17(b) of ID Act.

South Indian Workers Congress & Ors. vs. Sree Sankara University of Sanskrit, Kalady. 2010 LLR 280 (Kerala HC)

Interim relief is only available in case of reinstatement and not compensation under sec. 17B of ID Act.

Arora Combines vs. Damaji Ganpat Mankar and Another. 2010 LLR 341 (Bom. HC)

No interim relief under sec. 17B of ID Act to the employee who has not been reinstated but only regularised.

Employers in Relation to the Management of Rajrappa Washery Central Coalfields Ltd. vs. Their workmen, Rep. Through Bihar Colliery Kamgar Union, Rajrappa. 2010 LLR 370 (Jharkhand HC)

Employer is under obligation to pay last drawn wages or minimum wages whichever is higher when

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reinstatement order is challenged before HC.

Delhi Jal Board vs. Industrial Tribunal & Anr. 2010 LLR 472 (Del. HC)

Delay in raising industrial dispute and further delay in filing writ petition disentitles the employee from grant of relief.

Vritra Kumar vs. Central Bank of India & Ors. LLJ 1 2010 P. 740 (Del. HC)

"Wages last drawn" does not mean wages can be less than minimum wages.

Tahshildar Kathoumer & Ors. vs. Judge, Labour Court & Ors. LLN(1) 2010 P. 644 (Raj. HC)

While challenging the reinstatement, where management asked workman to report for duty in lieu of payment under sec. 17B of ID Act during pendency of petition, DTC employer has to pay equal wages as being paid to others alongwith same holidays and not the minimum wages.

Delhi Transport Corporation vs. Phool Singh & Anr. 2010 LLR 571 (Del. HC)

Once application for approval of dismissal under sec. 33 is rejected and workman not allowed to join the duties, he is entitled to last drawn wages under sec. 17 B of the ID Act.

Bikram Singh vs. Delhi Transport Corporation & Anr. 2010 LLR 682 (Del. HC)

When reinstatement is challenged, workman will be entitled to minimum wages as interim relief. In case employer succeeds, workman will refund the difference if his last drawn wages was less than minimum wages.

Vallabhbbhai Patel Chest Institute vs. Nishikesh Tyagi. 2010 LLR 785 (Delhi HC)

The payment of last drawn wages to a reinstated workman, who is not allowed to be reinstated by the employer, will be from the date he files Affidavit about his unemployment and not from any earlier date.

The Management of K.S.B. Pumps Limited vs. The Presiding Officer, Labour Court, Coimbatore and Ors. 2010 LLR 813 (Mad. HC)

In case of challenge of labour court order on issue of vitiating an enquiry by employer, sec. 17(b) of ID Act

will not be attracted. When the court finds the enquiry as valid, reference would be decided in favour of employer, no matters the employer failed to prove the misconduct before the industrial adjudicator.

Glaxo Smithkline Consumer Healthcare Ltd. vs. Presiding Officer, Labour Court-IX & Anr. 2010 LLR 900 (Del. HC)

Employer will be liable to pay last drawn wages as interim relief from the date of filing writ.

South Indian Workers' Congress vs. Sree Sankara University of Sanskrit. 2010 LLR 46 (Kerala HC)

SEC. 33 / SERVICE CONDITIONS

Compulsory retirement after holding enquiry where misconduct is proved, will amount to dismissal and approval of the same would be required under sec. 33 of the ID Act.

Sudhir Sharma vs. National Gandhi Museum. 2010 LLR 2 (Delhi HC)

Termination of service of workman due to reorganisation of work would be retrenchment and will not amount to alteration in service conditions hence would not hit by sec. 33(1) of I.D. Act.

K.N. Ashokan vs. Presiding Officer, Labour Court & Anr. CLR III 2009 P. 764 (Madras HC)

Claim for wages for extra duty will be tenable under section 33C(2) of Industrial Disputes Act.

Municipal Council, Samana vs. Radha Rani & Ors. 2010 LLR 80 (Punjab & Haryana HC)

Back-wages can be claimed under section 33C(2) of the Industrial Disputes Act and though a long time has elapsed, that will not be of any effect since there is no limitation prescribed under the Act for recovery of money due from the employer.

Managing Director, Kannad Sahakari Sakhar Karkhana Ltd., Aurangabad vs. Vishwnath Jagannath Kshirsagar and Ors. 2009 (4) LLN 492 (Bom. HC)

When the dismissal of workman was not bona fide on record and notice pay paid was also lesser than the amount, approval under sec. 33 (2)(b) of I.D. act rightly denied.

Tamil Nadu State Transport Corporation (Villupuram) Ltd. vs. Joint Commissioner of Labour, Chennai & Anr. 2010 LLR 138 (Madras HC)

In the absence of approval for dismissal under sec. 33 of ID Act, reinstatement justified.

Centurian Services (P) Ltd. vs. Dharamveer. 2010 LLR 260 (Del. HC)

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Application under Sec. 33C(2) of I.D. Act for costs and stitching charges of liveries by workmen is not maintainable.

Workmen of M.C.D. vs. M.C.D. LLJ I 2010 P. 417 (Del. HC)

When charges are not established, approval for dismissal rightly declined.

Delhi Transport Corporation vs. Sh. Vinod Kumar. 2010 LLR 457 (Del. HC)

When the matter is pending before HC, seeking approval for dismissal of workman is not required.

General Manager, Karnataka Bank Ltd., Mangalore vs. M. Ashok Kumar and Ors. 2010 LLR 511 (Karn. HC)

Under section 33-C(2) of ID Act labour court is competent to construe the settlement award or a statute under which the right is claimed.

Management of International Travel Service, Bangalore vs. A.S. Devaraja. 2010(124)FLR 1089 (Karn. HC)

Approval for dismissal rightly refused when charges of negligent driving was not proved.

Rajasthan State Road Transport Corporation vs. Abdul Hussain & Anr. 2010 LLR 490 (Raj. HC)

Approval for dismissal should be given when driver found plying bus on different route and not reporting break down to control room.

Delhi Transport Corporation vs. Rajbir Singh & Ors. 2010 LLR 652 (Del. HC)

If dispute is pending in HC and not either in Labour Court or Tribunal, approval for dismissal will not be required.

General Manager, Karnataka Bank Ltd., Mangalore vs. M. Ashok Kumar and Others. 2010 LLR 608 (Karn. HC)

Labour Court can't decide the employer-employee relationship issue in an application under sec. 33C(2) of the ID Act.

Agricultural Produce Market Committee, Solapur and Anr. vs. Nagnath Jyotiram Ghodke (Dead) by LRs. 2010 LLR 740 (Bom. HC)

Once settlement on dispute is arrived at by management, sec. 33 of ID Act for not seeking approval before dismissal is not attracted.

Ram Shankar vs. The Industrial Tribunal No. II & Anr. 2010 LLR 679 (Del. HC)

Imposition of punishment of stoppage of two increments will not attract breach of sec. 33 pending proceedings under ID Act.

Hasmukhbhai Babulal Rana vs. Ahmedabad Municipal Corporation & Anr. 2010 LLR 713 (Guj. HC)

Under sec. 33C(2) of ID Act labour court can't decide new right not based on existing right.

Smt. Neeta S. Pathak vs. Bombay Port Trust and Another. 2010 LLR 791

Under section 33C(2), the Labour Court is not empowered to allow interest on the amount of incentive allowance.

H.S.T. Hegde vs. Premier Automobiles Ltd. and Another. 2010 LLR 795 (Bom. HC)

Provisions of limitation act not applicable to the proceedings under sec. 33C(2) of ID Act.

South Indian Bank Ltd. vs. Labour Court and Others. 2010 LLR 807 (Kerala HC)

When findings of enquiry officer are not perverse and if there is *prima facie* evidence in support of findings, tribunal can't refuse to grant approval to the order passed by management.

When workman failed to participate in the enquiry, industrial tribunal is not empowered to review the management decision.

Delhi Transport Corporation vs. Nihal Singh. 2010 LLR 909 (Del. HC)

Approval application cannot be granted unless there is material to support the order sought to be approved.

V.K. Murgan vs. Tamil Nadu S.T. Corporation & Anr. LLN (2) 2010 P. 738 (Mad. HC)

When all three requirement of proviso to sec. 33(2)(b) of ID Act is complied with by employer, tribunal is to grant approval of removal of workman from service on the ground of wilfull absence.

National Engineering Industries Ltd. Jaipur vs. Chhotu Ram, and Another. 2010 LLR 923 (Raj. HC)

Claim not based on existing rights, not tenable under sec. 33C(2) of ID Act.

Ramniklal Dave vs. Stering Agency & Anr. 2010 LLR 1051 (Bom. HC)

Temple will not be a "Industry".

Sree Vinayaka Devasthanam Samithi, Bangalore vs. Smt. Kamamma. 2009 (123) FLR 576 (Karn. HC)

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When termination is effected due to reorganisation or work, will not attract sec. 33(1) or 33 (2) of the ID Act, even if the conciliation proceedings are pending.

K.N. Asokan vs. Presiding Officer, Labour Court, Coimbatore & Anr. 2010 LLR 976 (Mad. HC)

MISCONDUCT

Mere remaining in police custody does not amount to misconduct.

State of M.P. vs. Ramkumar Pathak & Anr. FLR (123) 2009 P. 184 : LLJ 2010 P. 42 (MP HC)

Reinstatement set aside of security guard dismissed for consuming alcohol at workplace being serious misconduct.

Tata Power Company Ltd. vs. S.M. Harke & Ors. CLR I 2010 P. 42 (Bom. HC)

A single charge of dishonesty on the part of workers is so severe that no one is expected to restore the said workers to service.

Management of Premier Instruments and Controls Ltd., Coimbatore vs. Presiding Officer, Labour Court, Coimbatore & Ors. 2010 LLR 492 (Madras HC)

Leaving workplace before duty hour may be detrimental depending upon nature of job. It is for employer to decide quantum of punishment as per gravity & nature of duty.

The Eastern Coalfields Ltd. vs. Shri Misri Yadav & Ors. 2010 LLR 666 (Cal. HC)

Once punishment is imposed for misconduct, can't be reopened.

Cheepurupalli Annaji Rao vs. Andhra Pradesh State Handloom Weaver Co-op. Society Ltd. & Anr. 2010 II CLR 1069 (AP HC)

Dismissal of bus driver without enquiry is invalid even when he caused accident, where one person died and others injured. Misconduct has to be proved.

Management, State Express Transport Corporation (Tamil Nadu) Ltd., Chennai vs. Presiding Officer, 1 Additional Labour Court, Chennai & Anr. 2010 LLR 1039 (Madras HC)

When a misconduct is not supported by service rules, no action can be taken against the employee for such commission of misconduct.

M. Marimuthu vs. General Manager (D& PB), State Bank of India and Another. 2010 LLN 454 (Madras HC)

Obtaining employment by concealing over qualification will not be misconduct for termination of peon by bank.

Bank of Baroda, Chandigarh vs. Presiding Officer, Central Government Industrial Tribunal, Chandigarh & Anr. 2010 LLR 1094 (Punjab & Haryana HC)

Long absence of six months is a serious misconduct and relief of compensation is sufficient.

Khairulla Hasanali Pathan vs. Godrej & Boyce Mfg. Co. Ltd. 2010 LLR 1150

MINIMUM WAGES

Paying Rs. 27 p.m. only for 30 years long would be a clear case of violation of minimum wages, highly codemnable and fit case for awarding compensation.

Chief Executive Officer, Zilla Parishad Beed and Others. vs. Radhabai and Another. 2010 LLR 217 (Bom. HC)

In the absence of any malafide, payment of compensation will not arise under MW Act.

Mahanagar Telecom Nigam Ltd. vs. S.M. Nikam and Others. 2010 (125) FLR 540 (Bom. HC)

Society being covered by definition of commercial establishment as provided in Delhi Shop Act, will be liable to pay minimum wages as applicable to them.

Multipurpose Training Centre for Deaf vs. Government of NCT of Delhi and Others. 2010 LLR 728 (Del. HC)

When workers draw more than M.W. and better facilities, can not claim O.T. under M.W. Act.

National Airports Authority vs. Sudershan Kumar & Ors. 2010 II CLR 950 (Del. HC)

When difference of minimum wages paid, eight times penalty would be harsh and liable to be quashed.

Haryana Tourism Corporation Ltd. vs. Authority under Minimum Wages Act, Faridabad and Others. 2010 LLR 987 (Punjab & Haryana HC)

PAYMENT OF WAGES

No bar under sec. 23 of PW Act operates in case of compromise / settlement between employer & employee.

Naasir Husain vs. Assistant Labour Commissioner, Moradabad and Another. 2010 LLR 374 (All. HC)

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PROBATIONER

Termination illegal when workman proved his employment even before issuance of appointment letter of probation.

CHD Developers Ltd. vs. Rajinder Prasad. 2009 LLR 1284 (Delhi HC)

A probationer services can be terminated either during or after the completion or the extended period of probation.

Hyderabad Industries Ltd., Deoghar vs. State of Jharkhand and Anr. 2010 LLR 40 (Jharkhand HC)

Termination of probationer during or at the end of the period will not be retrenchment.

Management of Pepsico India Holdings, Mamandur vs. Presiding Officer, 1st Addl. Labour Court, Madras & K. Babu. 2010 LLR 127 (Madras HC)

A probationer dispute of termination after 20 years liable to be quashed.

M/s Obeetee Pvt. Ltd. vs. State of U.P. and Others. 2010 LLR 330 (All. HC)

An employee's reversion, who has been provisionally promoted on probation of one year, will not be interfered by the High Court since a probationer has no right or lien on the post.

Nemi Chand Mittal vs. Zonal Manager (N), FCI & Ors. 2010 Lab IC 2073 (Del. HC)

Discharge of probationer during third year of extended probation period, when performance was not found satisfactory, will not be stigmatic.

Ram Lal Sharma vs. Himachal Pradesh Road Transport Corporation & Anr. 2010 LLR 970 (HP HC)

Probationer's termination due to unsatisfactory work will not be punitive.

Sanjeev L. Tatuskar vs. Secretary, Pune Institute of Computer Technology and Others. 2010 LLR 1110 (Bom. HC)

RESIGNATION

Resignation can be withdrawn before its valid acceptance.

Mala Tandon Thukral (Mrs.) vs. Director of Education & Others. 2010 LLR 659 (Del. HC)

REINSTATEMENT

Reinstatement with back wages proper when enquiry is vitiated as violative of principles of natural justice.

Delhi Transport Corporation vs. Sh. Ram Kishan (Ex-Driver). 2010 LLR 394 (Del. HC)

Reinstatement with full back wages would be proper where disciplinary proceedings were quashed being based on vague charge sheet.

Balvinder Singh Nigah vs. General Manager (Operations) Hotel Corporation of India Ltd. 2010 LLR 102 (Delhi HC)

When 20 years have been passed and workman worked for only 2 years, lump-sum compensation would be proper instead of reinstatement.

Executive Engineer, Irrigation & Anr. vs. Raj Kumar & Anr. 2010 LLR 21 (Raj. HC)

No reinstatement when bus conductor was found guilty of dishonesty.

Management of M/s. Delhi Transport Corporation vs. Suresh Kumar. 2010 LLR 116 (Del. HC)

Reinstatement justified for erecting temporary hutment though unauthorized by sweeper employee.

Life Insurance Corporation of India & Ors. vs. Presiding Officer, Central Government Industrial Tribunal, Kolkata and Ors. 2010 LLR 296 (Cal. HC)

When 20 years have passed, no reinstatement but only compensation would serve the purpose.

Chief Engineer, P.W.D., Patiala and Others vs. Presiding Officer, Labour Court, Patiala and Others. 2010 LLR 287 (Punjab & Haryana HC)

When appointment not made in prescribed procedure and services terminated illegally, compensation in lieu of reinstatement would be proper.

U.P. Power Corporation Ltd. vs. Presiding Officer/Labour Court II, Kanpur and Others. 2010 LLR 375 (All. HC)

Reinstatement with 50% back wages appropriate in case of oral termination.

U.P. Bridge Corporation Ltd., Lucknow vs. Presiding Officer, Industrial Tribunal, Government of Goa and Others. 2010 LLR 346 (Bom. HC)

When workman worked for short period, compensation will be justified instead of reinstatement.

Management of M/s. Hindustani Dawakhana and Ayurvedic Rasayanshala vs. Jagdish Singh Rajpoot. 2010 LLR 342 (Del. HC)

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No reinstatement when workman failed to prove 240 days working.

Saran Kshetriya Gramin Bank and Another vs. Union of India Through Ministry of Labour, Government of India, New Delhi, Through its Secretary and Others. 2010 LLR 360 (Patna HC)

Even temporary employee when completed 240 days will be entitled reinstatement compensation.

Executive Engineer, Palkhed Canal Division, Nashik vs. Pandharinath Chindu Kale. 2010 LLR 539 (Bom. HC)

When the daily-wager was not appointed on a project, his reinstatement would be proper.

M/s Uttar Pradesh Bridge Corp. Ltd. vs. Presiding Officer, Industrial Tribunal, Goa & Ors. 2010 Lab IC 1515 (Bom. HC)

When the labour court held that termination order is valid, it was not in court's jurisdiction to order re-engagement of workman.

Super Cassettes Industries Ltd. vs. State of U.P. and Others. 2010 LLR 699 (Alla. HC)

No reinstatement of the workman who was appointed for a specified period.

Executive Engineer, Works Division, Zilla Parishad, Jalgaon vs. Abdul Sami A. Sayeed and Another. 2010(125) FLR 427 (Bom. HC)

Employer can't be compelled to continue such employee in service against whom charge of theft was dully proved. No matter he was acquitted in criminal case.

A.S. Manjrekar vs. Bombay Port Trust and Anr. 2010 LLR 859 (Bom. HC)

Reinstatement rightly awarded when workman proved that he worked for more than 240 days and sec. 25F of ID Act was not complied with.

Vadia Gram Panchayat vs. Pratapbhai Dadbhai Kotila. 2010 Lab IC 2195 (Guj. HC)

Employee will be entitled to reinstatement without back wages when termination was done without complying the provisions of sec. 25F of ID Act.

Sunita Gupta vs. Nagar Palika Parishad, Sabalgarha, Distt. Morena & Anr. 2010 LLR 847 (MP HC)

When driver acquitted in criminal case for rash and negligent driving, back wages and continuity of service on reinstatement can't be denied.

Sonu Mahadeo Chavan vs. Pune Municipal Transport. 2010 LLR 898 (Bom. HC)

Compensation in lieu of reinstatement has to be awarded on the basis of the calculation by taking into account the drawn salary and allowances as specified by Supreme Court.

Mr. Jagannath S/o Wamanrao Mane vs. M/s. Wokhardt Ltd. 2010 LLR 955 (Bom. HC)

When neither the charge sheet was replied nor participated in the enquiry, reinstatement illegal.

Maharashtra General Kamgar Union vs. Haldyn Glass Works Ltd. 2010 LLR 1013 (Bom. HC)

No reinstatement with back wages to a person who lost lien on job by remaining absent for more than 3 years without explanation.

Indian Coffee Board vs. Presiding Officer, Labour Court No. X and Another. 2010 LLR 989 (Del. HC)

Reinstatement with full back wages in the case of illegal termination is not a settled law. Workman has to prove unemployment during the period. In this case 25% back wages award was appropriate.

Rohitsinh Vakhatsinh Darbar, C/o Gujarat Audhyogik Kamdar vs. Arvind Rubber-Well Control Ltd. 2010 LLR 940 (Guj. HC)

Reinstatement without back-wages in substituting termination for continuous absence of 101 days, after holding he enquiry, would be appropriate since the workman (now deceased) has worked for a long period and comes from a poor family.

Union of India (Rep. by Chief Workshop Manager), Carriage and Wagon Works, Southern Railway, Madras vs. (1) Registrar, Industrial Tribunal Tamil Nadu, Chennai, (2) P.N. Balasundaram. 2010 LLR 1002 (Mad. HC)

In the absence of any contract, termination of services of the workman without compensation will amount to illegal retrenchment and instead of reinstatement, compensation will be appropriate.

Rajasthan State Text Book Board vs. Shri Kajod Mal and Another. 2010 LLR 1008 (Raj. HC)

Reinstatement with back-wages to be granted when workman sent medical certificate for sick leave and employer presumed voluntary abandonment. Since factory is closed, one lakh compensation granted.

Universal Cylinders Ltd., Alwar vs. Judge, Labour Court, Bharatpur & Dena Nath Mehto. 2010-II CLR 821 (Raj. HC)

Being telephone department an industry under ID Act, award of labour court granting reinstatement with

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back wages from the date of raising the dispute need not to be interfered.

Mahanagar Telephone Nigam Ltd. vs. Deepak Sadashiv Shrikande & Ors. 2010 LLR 1205 (Bom. HC)

In the absence of birth certificate, opinion of the medical board about the age of the workman would be final and not of the employer. Such retirement would be illegal and reinstatement 50% back wages would be proper.

Management of CSI Rainy Multispeciality Hospital, Chennai vs. G. Doss and Anr. 2010 LLR 1213 (Mad. HC)

Reinstatement itself connote continuity of service.

Punjab State Electricity Board Workers' Union, Gurdaspur vs. Industrial Tribunal, Chandigarh and Ors. 2010 LLR 1244 (P. & H. HC)

Even when there is violation of sec. 6N of U.P. ID Act regarding retrenchment, reinstatement is not automatic.

Nagar Nigam, Gorakhpur vs. State of U.P. and Others. 2010 LLR 27 (All. HC)

Retrenchment presupposes compliance of sec. 25F of I.D. Act.

Anil Kumar and etc. vs. Executive Engineer, PWD, Public Health Div., Gurgaon & Anr. 2009 Lab. IC 4064 (Punjab & Haryana HC)

When retrenchment is effected under sec. 25-N of the I.D. Act, compliance of sec. 25-F & G not required.

Mrs. Malti Devi vs. Management, Of M/S, I.E.S. India Ltd. and Another. 2009 (123) FLR 926 (Jharkhand HC)

When bus conductor has no ill-intention of not issuing tickets to passengers but could not do so because he was taking care of a seriously ill passenger and started bus without issuing tickets, termination on such ground will not be valid. Reinstatement justified.

Depot Manager, Andhra Pradesh State Road Transport Corporation, Hyderabad II Depot, Hyderabad vs. K. Jogi Reddy and Anr. 2010 LLR 60 (AP HC)

In case of illegal termination of daily wager, compensation and not reinstatement with back wages would be proper.

Nepal Son of Sh. Khichhu Ram vs. Presiding Officer, Labour Court-III, Faridabad and Anr. 2010 III CLR 565

RETRENCHMENT

Even if retrenchment provisions are violated, reinstatement with full back wages is not the rule.

Munshi Singh S/o Balwant Singh Kushwah vs. Nagar Panchayat, Jaura. 2009 LLR 1294 (MP HC)

If retrenchment is illegal, compensation in lieu of reinstatement would be proper.

Superintending Engineer, P.W.D. B & R, Bhiwani vs. Prem Kumar & Anr. 2010 LLR 83 (Punjab & Haryana HC)

Discharge simplicitor will be illegal without retrenchment compensation.

Bhim Sen Sharma vs. Presiding Officer, Labour Court, Patiala and Others. 2010(124) FLR 201 (Punjab & Haryana HC)

Continuance of employee for more than 6 years without break-Compliance of S.25-F is necessary.

University of Rajasthan & Ors. vs. Gopal Sharan Gupta. LLJ I 2010 P. 216 (Raj. HC)

While retrenching the workman, it is not mandatory for the employer to issue notice in Form P to the Government.

Simplex Electronics vs. Vimalaben Atmaram Yadav & Anr. 2010 LLR 514 (Guj. HC)

When factory is closed, no question of applying the principles of provisions of section 25F, 25G and 25H of ID Act arises.

Ajit Kumar and Others vs. Presiding Officer, Industrial Tribunal Cum-Labour Court and Another. 2010(124)FLR 1072 (Punjab & Haryana HC)

Retaining juniors of another unit while retrenching seniors would be breach of section 25G of ID Act.

Haryana State Industrial Development Corporation Ltd. vs. Presiding Officer, Industrial Tribunal-Cum-Labour Court, Hissar and Another. 2010(124)FLR 1067 (Punjab & Haryana HC)

When no appointment was given against a sanctioned post to a daily wager, no retrenchment compensation will be payable to him at the time of termination.

State of U.P. and Another vs. Presiding Officer, Labour Court, Kanpur and Another. 2010 LLR 747 (All. HC)

No interference from HC when Govt. allowed the retrenchment under sec. 25N of ID Act after considering all aspects.

Bharat Seats Employees' Union vs. The Specified Authority under section 25N of the Industrial Disputes Act, 1947 and Anr. 2010 (125) FLR 767 (Punjab & Haryana HC)

LABOUR Judgments



When the appointment itself being illegal and employer having not indulged in unfair labour practice, reinstatement with back wages will not be proper even if termination was in contravention of sec. 25F of ID Act.

New India Assurance Co. Ltd. vs. Narender Kumar. 2010 LLR 854 (Del. HC)

Non renewal of contract of part time Teleprinter operator, will not amount to retrenchment.

Express Publications (Madurai) Ltd. vs. K. Daglas and another. 2010 (126) FLR 484 (Kerala HC)

Relief as compensation for termination of temporary employment without non-compliance of Sec. 25F of ID Act need not to be interfered.

Union of India vs. Presiding Officer, CGIT & Anr. 2010 LLR 1159 (Del. HC)

Part-Time employee is entitled to claim protection of sec. 25-F of ID Act.

Himachal Pradesh State Electricity Board and Anr. vs. Laxmi Devi and Anr. 2010 III CLR 626 (HP HC)

Though bank employee worked in different branches but did not work for 240 days continuously before termination, will not be entitled for any relief under sec. 25F of the ID Act.

Bank of Baroda, Kota vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kota and Another. 2010 LLR 1195 (Raj. HC)

Retrenchment compensation is to be calculated @ of 15 days per month assuming 30 days of a month and not 26 as in the case of gratuity.

Management of TANSI, Mettur Dam and Anr. vs. Presiding Officer, Labour Court, Salem and Others. 2010 LLR 159 (Madras HC)

Reinstatement with 50% back wages proper when worker worked for 240 days and retrenched illegally. Employer failure to produce service record will go against him.

Naveen Singh Bhadoriya vs. State of M.P. 2010 LLR 1291 (MP HC)

SHOPS & ESTABLISHMENTS

Even if there is 5 day week and employee is required to work on sunday or holiday, he will be entitled to over time under sec. 5 & 13 of W.B. Shop and Establishment Act.

Food Corporation of India vs. Union of India and Others. 2010 LLR 33 (Cal. HC)

SETTLEMENT

When the validity of settlement is disputed and reference is made out, court should frame and decide this as preliminary issue.

Paranjape Metal Shapers (Private) Ltd. vs. Pamets Employees Union. 2010 LLR 988 (Bom. HC)

One worker even if complainant, can't be permitted to re-agitate the matter once settled between management and majority of workers.

G.B. Hingurani vs. Vinayak Narayan Govekar and Another. 2010 LLR 1108 (Bom. HC)

It is the binding nature of the award / settlement and not the period of operation which is relevant for launching the prosecution for breach under ID Act. Limitation provision under sec. 468 of Cr. P.C. not attracted.

Sri. Vikram Kirloskar vs. State of Karnataka and Anr. 2010 LLR 1247 (Karn. HC)

An individual can't file a complaint before magistrate under sec. 34 of the ID Act for breach of settlement or award.

Kerala State Construction Corporation Ltd. vs. Regional Joint Labour Commissioner. 2010 LLR 43 (Kerala HC)

A settlement under the I.D. Act is quite sacrosanct and binds the parties.

Valliammai vs. Block Development Officer & Ors. CLR I 2010 P. 663 (Madras HC)

STANDING ORDERS

In the interest of exigencies of employment, employer can draft its own standing orders by departing from model S.O. and get it certified. Transfer clause in such standing orders will not be illegal.

P. Nani, Hyderabad and Anr. vs. Certifying Officer-cum-Deputy Commissioner of Labour (Twin Cities), Hyderabad and Anr. 2010 LLR 175 (AP HC)

LABOUR Judgments



Amending age of retirement from 55 to 58 in standing orders would not be illegal. Either management or employees can move application for amendment in certified standing orders.

Devaki M. and Others vs. B.P.L. Group of Companies. 2010 LLR 801 (Kerala HC)

When service rules of a society registered under specific act are approved by the Govt., Industrial Employment (SO) Act will not apply.

K.H.R.W.S. Employees Federation vs. K.H.R.W. Society. 2010 LLR 1075 (Kerala HC)

A driver, classified as permanent under the Industrial Employment (Standing Orders) Act, will get the regular pay scale.

Rupram Yadav vs. State of M.P. and Others. 2010 LLR 1065 (MP HC)

SUSPENSION

No earned leaves for the period of suspension to an employee.

Central Bank of India vs. Shyam Lal Jain. 2010 (125) FLR 1041 (Del. HC)

TERMINATION

When reappointed after termination, employee can not challenge the termination.

Sahebrao vs. Divisional Controller, Maharashtra Road Transport Corporation. 2009 (123) FLR 559 (Bom. HC)

When it is proved that disciplinary authority acted with pre-conceived notion to dismiss a workman, such termination would be illegal and reinstatement justified.

Than Singh Chabra vs. Indian Oil Corporation Ltd. & Ors. 2010 LLR 65 (Delhi HC)

A daily wager can't challenge his termination as illegal retrenchment.

Divisional Forest Officer, Rohtak vs. Jagat Singh & Anr. 2010 LLR 39 (Punjab & Haryana HC)

In the facts and circumstances of the case termination of the workman's service for prolonged absence due to daughter illness was held not justified.

Haryana State Federation of Consumers' Co-operative Wholesale Stores Ltd. & Ors. vs. Presiding Officer, Labour Court-cum-Industrial Tribunal, Hissar & Anr. CLR III 2009 P. 367 (Punjab & Haryana HC)

Even when use of abusive language is proved, termination can't be sustained being workman was rustic and illiterate and misconduct required to be considered in that back ground.

Om Prakash Sharma and Another vs. Bijli Cotton Mills, Hathras and Others. 2010 LLR 142 (Alla. HC)

Termination simpliciter with no stigma for absence due to prolonged ill-health cannot be termed as illegal.

E.M.E. Edwards, St. George School vs. P.O. Industrial Tribunal & Anr. LLJ IV 2009 P. 786 (Mad. HC)

Termination appropriate when employee was guilty of allowing passengers without ticket in bus.

U.P. State Road Transport Corporation and Another vs. State Public Services Tribunal, Lucknow and Another. 2010 LLR 362 (All. HC)

Termination valid in case where workmen obtained employment by misrepresentation about his caste.

Satish Chandra Gupta vs. Steel Authority of India Limited, Bokaro & Ors. 2010 LLR 405 (Jharkhand HC)

Continuous absence for a long time by the workman will justify his termination from service even without holding of enquiry.

Subhash Ramchandra Dumbre vs. Maharashtra State Co-operative Agricultural & Rural Development Bank Ltd. & Ors. 2010 II LLJ 632 (Bom. HC)

Discharge on the basis of continuous ill-health will be illegal in the absence of strong material evidence.

Somasundaram vs. Labour Court, Coimbatore and Anr. 2010 LLR 919 (Mad. HC)

Termination illegal of a chaukidar worked for two years. Entitled to compensation only and not reinstatement.

Director Food and Supplies Department and Others vs. Prem Kumar and Another. 2010 LLR 1006 (Punjab & Haryana HC)

Suit challenging termination in civil court not maintainable.

Ninua Nath vs. State Bank of India, New Delhi and Another. 2010 LLR 1124 (All. HC)

Once termination is held illegal, generally reinstatement with back wages should be awarded.

Mahabir Singh v. Delhi Transport Corporation. 2010 LLR 1156 (Del. HC)

LABOUR Judgments



TRADE UNION

Once a trade union has given its consent for verification of membership by secret ballot, it is estopped from challenging the same in writ petition.

Petroleum Employees Union vs. Chief Labour Commissioner (Central) and Others. 2009 IV LLJ 745 (Bom. HC)

The union which establishes larger membership of workmen, management can't denied recognition to such union.

MRF United Workers Union rep. by its General Secretary, Arakkonam vs. Government of Tamil Nadu, rep. by its Secretary, Labour and Employment Department and Others. 2010 LLR 165 (Madras HC)

A trade Union, with a very small minority of the Bank's workers, will not be entitled to any relief in the writ petition challenging memorandum of settlement with the Federation of the Banks.

All India Punjab National Bank Workers Federation vs. Punjab National Bank. 2010 LLR 320 (Del. HC)

Union can't represent in industrial dispute unless workers are members of union.

Duncans Industries Ltd., Kanpur vs. Presiding Officer & Anr. 2010 LLR 403 (All. HC)

Employer has every right to remove Trade Union flag from his premises.

Kerafibertex International Pvt. Ltd. vs. Kerafibertex Employees Association and Another. 2010(125)FLR 365 (Kerala HC)

When a person is aggrieved by the election about recognition of a trade union and also fresh elections have taken place, the remedy will lie before the civil court and not the Registrar of Trade Unions since the later has no such power to decide when there is a dispute.

Roadways Mazdoor Sabha, U.P. and Another vs. State of U.P. and Others. 2010 LLR 1021 (All. HC)

TRANSFER

Civil Court has no jurisdiction to entertain a dispute in connection with transfer of workmen.

Shasun Chemicals & Drugs Ltd. vs. V. Doraiswamy. FLR (123) 2009 P. 520 (Madras HC)

If an employee fails to comply with the transfer order, he will not get any wages in view of the Supreme Court ruling but at the same time, if because of court order he has been paid salary for such period, that will not be recovered back.

N. Uthandavan vs. Registrar, Central Administrative Tribunal, Madras Bench, Chennai, and Others. 2009 (4) LLN 588 (Mad. HC)

When transfer order is in accordance with the standard code, stay by industrial court would be improper.

Anjuman-I-Islams M.H. Saboo Siddik College of Engineering vs. General Secretary, Akhil Bhartiya Kamgar Sena & Ors. 2010 LLR 308 (Bom. HC)

When trade union executive who is science graduate responsible for manufacturing of soaps, sent for machine inspection by transfer and discharged for disobedience would be malafide and illegal.

Management of Ultramarine and Pigments Ltd. Ranipet vs. Presiding Officer, Labour Court, Vellore. LLJ I 2010 P. 145 (Mad. HC)

An office bearer of a trade union can't claim immunity from transfer.

Gautam Sengupta vs. Punjab & Sind Bank & Ors. 2010 LLR 430 (Cal. HC)

Industrial tribunal can entertain a dispute of transfer.

Valsad District Co-operative Bank Ltd., through Manager vs. Valsad District Co-operative Bank Employees' Union. 2010 LLR 412 (Guj. HC)

No interference by civil court in the matter of transfers of employees in private sector.

Birla Jute Industries Ltd., Chanderia & Anr. vs. Ramesh Chandra S/o Ramswarup Gattani. 2010 LLR 378 (MP HC)

Junior officer doing clerical job is a workman under ID Act. Disobeying transfer order will amount to misconduct to justify dismissal from service.

Eicher Motors Limited vs. Presiding Officer, Labour Court, U.T. Chandigarh and Anr. 2010 LLR 418 (Punjab & Haryana HC)

Decline to interfere with the transfer order, HC single bench is right.

Shyam Babu Bhatnagar vs. U.P. Power Corporation Ltd. and Others. 2010 LLR 478 (All. HC)

Courts not to interfere in transfer of office bearers of union being prerogative of employer.

All India State Bank of Indore Officers' Coordination Committee vs. State Bank of Indore. 2010 LLR 553 (MP HC)

LABOUR Judgments



Courts not to interfere in transfer of office bearers of union being prerogative of employer.

General Manager, United News of India, New Delhi vs. State of Orissa and Two Others. 2010(124)FLR 994 (Orissa HC)

Transfer of bank employee from one branch to another is legal. Such employee remaining absent for 90 days has been rightly deemed by bank as voluntary abandoned the job.

Punjab National Bank vs. Union of India & Anr. 2010 LLR 616 (Del. HC)

Transfer of a daily rated employee will be illegal being not bound by the conditions of the service containing transfer from one place to another.

Ashok Tiwari vs. M.P. Text, Book Corporation and Anr. 2010(2) MPLJ 662 (MP HC)

When the bank employee remains absent for 30 days, presumption of voluntary retirement of employee as per bi-partite settlement would be legal. No employee has a right to be posted at any place of his choice and remaining absent due to this reason has no legality.

Syndicate Bank vs. Sh. B.N. Pandey & Anr. 2010 LLR 903 (Del. HC)

When employee failed to comply with the transfer order, termination would be legal.

Shubhada Phansekar vs. Travel Corp. (India) Ltd. & Ors. 2010 LLR 1087 (Bom. HC)

Though transfer of an employee is prerogative of employer but in case of low paid / class iv employee transfer outside state should rarely be done bonafidely only when administrative exigencies require.

K.N. Singh and Another vs. G.M. (Personnel), M.M.T.C. Ltd. and Others. 2010 LLR 1172 (Orissa HC)

For non compliance of transfer order. No need of holding enquiry by employer.

General Manager, South Central Railway vs. Syed Abdul Kareem. 2010 LLR 1283 (AP HC)

VRS

When an employee has opted for Voluntary Retirement Scheme and also received the retiral dues

accruing out of it, he will not have any right to withdraw his option.

Milind Pandharinath Behere vs. Union Bank of India, Mumbai and Others. 2010 (124) FLR 159 (Bom. HC)

VRS optee received all payments should not be reinstated.

H.M.P. Engineers Ltd., Fatehnagar vs. R. Kashi Naidu. 2010 LLR 252 (Guj. HC)

Acceptance of VRS application can't be challenged by the employee on the ground that no exit interview was conducted.

Oil and Natural Gas Commission and Others vs. L.K. Khan Babi. 2010 LLR 357 (Guj. HC)

Once VRS is accepted by the employee, he can't be allowed to avail further benefit of new VRS introduced thereafter.

Managing Director, Steel Authority of India Ltd. vs. Smt. Basanta Bai and Another. 2010 LLR 798 (Chhattisgarh HC)

VRS application can be withdrawn before its acceptance.

Madhusudan Govindrao Trivedi vs. UCO Bank, Calcutta and Others. 2010 LLR 1052 (Bom. HC)

Application for voluntary retirement under VRS does not confer a right that the competent authority has to accept the same.

C.V. Francis vs. Union of India and Ors. 2010 LLR 29 (Jharkhand HC)

WORKMAN

Ad-hoc employee or daily wager has no right of regularisation even if completed two years of service.

Dharamvir Singh (Shri) vs. The Management of M/s Shri Aurbindo College. 2010 LLR 92 (Delhi HC)

To determine whether a person is a workman, main criterion would be his dominant nature of duties and not absolute autonomy.

Standard Chartered Bank vs. Vandana Joshi and Another. 2010 LLR 200 (Bom. HC)

Employee who was not a workman but a highly paid executive cannot challenge the Arbitrator's award having regard to the unfair stand taken by him.

GIVO Ltd. vs. David Johnson. LLJ IV 2009 P. 748 (Del. HC)

Senior Engineer discharging supervisory duty would not be workman under ID Act.

Gulshan Rai Madan vs. Govt. of NCT of Delhi & Anr. 2010 LLR 294 (Del. HC)

LABOUR Judgments



A doctor engaged in diagnosis and treatment of patients will not be a workman.

Mar Baselios Medical Mission Hospital vs. Dr. Joseph Babu. 2010 LLR 376 (Kerala HC)

Area sales Manager of a pharmaceutical company will not be workman either under UP ID Act or Sales Promotion Employees Act.

M/s. Pfizer Ltd. vs. State of U.P. and Others. 2010 LLR 586 (All. HC)

Junior Engineer though appointed as supervisor but not discharging supervisory duty, will be workman under ID Act.

Batuk S. Chauhan vs. Factory Manager and Another. 2010 LLR 598 (Guj. HC)

Doing clerical job and checking bills will not amount to supervisory work.

Ranbir Singh vs. Presiding Officer, Labour Court II, Faridabad and Another. 2010 LLR 614 (Punjab & Haryana HC)

Senior engineer is not a workman under ID Act.

S.N. Goswami vs. Presiding Officer, Labour Court-II, Faridabad & Anr. 2010 Lab IC 1274 (Punjab & Haryana HC)

When there is no appointment letter or any other documentary evidence, personal driver of General Manager can't be held to be an employee of the company.

Mudra Communications Ltd. vs. Ganesh Kumar and Ors. 2010 LLR 763 (Del. HC)

Even if employer does not lead any evidence that employee was not workman, it is for the employee to establish that he comes within the definition of "Workman" under ID Act.

District Administrative Committee, U.P. P.A.C.C.S.C. Services vs. Secretary-Cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519 (Alla. HC)

Draftsman being not equal to artist will be workman under ID Act.

Maheshwar Singh vs. Indomag Steel Technology Ltd. 2010 LLR 824 (Del. HC)

Neither nomenclature nor designation or salary is the factor to decide whether an employee is a workman

or not. It is for the employer to rebut the evidence produced by the workman about his being a workman.

Chandrashekhar Chintaman Vaidya vs. National Organic Chemical Industries Ltd., Akola. 2010 LLR 926 (Bom. HC)

It is for the workman to prove the employer employee relationship and not the employer. In such absence workman will not be entitled to any relief.

Prem Nath Yadav vs. Chandra Bose & Ors. 2010 LLR 1208 (Del. HC)

Having worked for long, adhoc / temporary workmen can't claim regularisation only on this ground. Statutory procedure is also required to be followed.

Jivanbhai Gopabhai vs. Bhavnagar Mahanagarpalika & 2 Ors. 2010 LLR 1229 (Guj. HC)

Business development manager drawing Rs. 32500/- per month would be workman under ID Act since neither any employees were working under him nor having any power to sanction leave.

Pam Network Ltd., Bangalore vs. B. Balakrishna. 2010 LLR 1198 (Karn. HC)

No relief can be given to workman unless court decides about 240 days working in a year of the workman.

Shyamal S/o Chhaganlal Banjare vs. Manager, Ankur Talkies, Dewas. 2010 LLR 1194 (MP HC)

Accounts officer or assistant manager not discharging supervisory duties will be workman under ID Act.

Kirloskar Electric Company Ltd. (M/s) vs. Government of N.C.T. of Delhi and Ors. 2010 LLR 6 (Delhi HC)

Daily rated employer is also a workman under I.D. Act.

General Manager, Chitrakoot Dham Manelal vs. P.O. Labour Court. 2010 LLR 1272 (All. HC)

MISCELLANEOUS

Where employee of the company found having illegal possession of company property, would be dealt speedily under sec. 630 of Companies Act.

M/s. Tata Steel Ltd. vs. State of Jharkhand and Another. 2010 LLR 283 (Jharkhand HC)

Employee in a private sector can challenge a clause in appointment letter as opposed to public policy only on factual foundation thereof.

Sethi Y.K. vs. BASF India Ltd. LLJ | 2010 P. 493 (Del. HC)

LABOUR Judgments



No regularization of service when there exists no employer-employee relationship.

Employer in relation to Management of 'D' Ropeways of B.C.C.L. Dhanbad vs. Workmen represented by Bihar Colliery Kamgar Union, Dhanbad. CLR I 2010 P. 411 (Jharkhand HC)

Employees are not entitled to increments notionally earned during the period of their unauthorized absence.

G. Venkateswarlu & Ors. vs. Regional Manager, A.P.S.R.T.C. CLR I 2010 P. 607 (AP HC)

For cement industry, the Central Government is the appropriate Government and the provisions of the MRTU and PULP Act do not apply to cement industry.

Ultra Tech Cement Ltd., Chandrapur vs. Shriniwas M. Mohril. CLR I 2010 P. 656 (Bom. HC)

A worker who is suffering from diabetes and blood pressure could develop chest pain on account of stress and strain of work.

Management of HAL Helicopter Division, Bangalore vs. Smt. L. Fatima Mary & Ors. 2010 I CLR P. 232 (Karn. HC)

Employee who has put in 480 days service from March 1984 to February 1986 is held to be entitled to permanent status in service.

Management of Shri Ganpathy Mills Co. Ltd. vs. Deputy Chief Inspector of Factories. CLR I 2010 P. 665 (Madras HC)

The appropriate Authority for dock workers is Central and not the State Government.

Regional Director, Employees' State Insurance Corporation, Goa vs. Mormugao Handling Agents Association, GOA. 2010 LLR 581 (Bom. HC)

Nursing allowance will also be payable to nurses/ midwives working in dispensaries being part of employer's hospitals.

Govt. of NCT of Delhi vs. Rita Luthra & Ors. 2010 Lab IC 2160 (Del. HC)

Any person can be appointed as representative of the employer under power of attorney.

Maharashtra Employees Union vs. M.K. Metal Industries and Others. 2010 LLR 936 (Bom. HC)

When workers resided in the leprosy home of MCD unauthorisedly, though having made their *jhuggis* out

side the leprosy home, they are not entitled to HRA. Deduction valid.

Municipal Corporation of Delhi vs. Workmen as represented by Delhi Municipal Karamchari Ekta Union & Anr. 2010 LLR 968 (Del. HC)

Increment if is to be stopped, should be with a speaking order otherwise should be released with due date.

Prahlad Kumar Vishwakarma vs. M.P. State Textile Corporation Ltd. Through Its M.D., Bhopal and Another. 2010 LLR 1000 (MP HC)

Clerical error in employer's address will not make him free from liability to implement the award passed against him.

Ruchika Cables Pvt. Ltd. vs. Secretary (Labour) & Anr. 2010-II LLR 853 (Del. HC)

Compulsory retirement of bank employee after enquiry for remaining absent for 536 days justified.

Mrs. Pramila David vs. The General Manager, Syndicate Bank & Ors. 2010 LLR 1041 (Madras HC)

Management decision to abolish full time post can't be challenged.

Super Screw Private Limited vs. Presiding Officer, Labour Court No. II, Faridabad and Anr. 2010 LLR 1163

Issue of change of date of birth can not be decided in writ.

Ramesh Balmiki @ Ramesh vs. Steel Authority of India Ltd. and Others. 2009 (123) FLR 507 (Jharkhand HC)

Promotion is not a matter of right.

Haryana Power Generation Corporation Ltd. vs. Mai Chand. LLN (4) 2009 P. 288 (Punjab & Haryana HC)

Unless acknowledgment due of registered AD post is received, service of document can't be presumed.

Modi Sugar Mills, Modi Nagar, Ghaziabad vs. Presiding Officer-Labour Court, II, Ghaziabad and Others. 2010 LLR 273 (All. HC)

Code of Discipline in Industry can be made applicable when both the employer and the employees agree hence the High Court would not issue directions for its applicability.

Bharatiya Kamgar Karmachari Mahasangh vs. Union of India & Ors. 2010 LLR 251 (Bom. HC)

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Few Past Issues

