



# **INDIAN INSTITUTE OF WORKERS EDUCATION, MUMBAI**

(founded by the Central Board for Workers Education)

**Ministry of Labour & Employment, Govt. of India**

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## Labour News

### G20 Labour Ministers' for job-centric growth strategy

The G20 Labour Ministers' meeting in Paris has decided to set up an Inter-Ministerial Working Group to work out global strategies on youth unemployment. The group will also have representatives from international financial organisations. The meeting also adopted a resolution for encouraging the concept of social protection floor for vulnerable sections of the population.

Addressing the meeting, the Union Minister of Labour & Employment, Mr. Mallikarjun Kharge, said only a job-centric growth strategy would be sustainable. He said that the Indian economy had grown at a rate of over 8 per cent, but significant external and internal challenges need to be overcome to achieve the projected 9 per cent growth rate.

Mr. Kharge informed the G20 about some "innovative labour market policies" such as the Mahatma Gandhi National Rural Employment Guarantee Act 2005 and the Unorganised Workers' Social security Act 2008.

**(Reference: Labour Law Reporter, November, 2011.)**

**Only 14% of senior executives say workplace is staff-friendly:  
Survey**

In the current tight economic scenario, at one side if employees are facing job losses, and on the other side employers are also struggling to retain employees and meet their expectations.

A survey of 200 senior executives shows that only 14 per cent found their organisation employee-friendly.

Around 29 per cent said the culture in their organisation was performance – oriented, 20 per cent found it customer –focused, 19 per cent said it was entrepreneurial and 18 per cent said their workplace culture was innovative – friendly.

Mr. Ronesh Puri, Managing Director, Executive Access, the head – hunting firm that carried out the survey, said in a release, “The results are interesting but not surprising. Post-recession, most companies have become cautious and bottom line-focused. Investors and other stakeholders are putting pressure on organisations to perform. Even the macroeconomic environment is uncertain... hence it is imperative for organisations to mould their culture towards performance and productivity”.

He said there was also a perception of “unfriendliness” as most organisations, to cut expenses, had trimmed down perks and frills and payouts had become performance – oriented.

**(Reference:** Labour Law Reporter, November, 2011.)

**PF contribution – not necessary on minimum wages**

The appeal of the appellant against the order of the EPF Authority under section 7A of the Act directing the appellant to deposit the dues is illegal as the EPF Authority has assessed the dues treating the minimum wages as ‘basic wages’ as defined in Section 2(b) of the Act and allowances as part of basic wages or not or whether the payment was made as per the Minimum Wages Act or not.

The EPF Appellate Tribunal observed that section 7A deals with the power of the EPF Authority. The perusal of the section reveals that the Authority has the power to resolve the dispute regarding the payment of dues but it has no power to hold whether minimum wages amount to basic wages or not. Hence, the order of the EPF Authority was set aside and appeal allowed.

**(Reference :** Labour Law Reporter, November, 2011.)

## Coverage not proper when employees were less than 20

The appeal of the appellant against the order of the EPF Authority under Section 7A of the Act directing the appellant to deposit the dues is illegal as the EPF Authority has assessed the dues of the period when the strength of employees with the appellant was less than 20.

The EPF Appellate Tribunal observed that the burden to prove the staff strength lies on the appellant as per provisions of law and on the basis of already decided cases. The appellant has produced muster roll and attendance register, duly verified by the competent authority, showing staff strength less than 19 prior to 2006. There was no other record showing staff strength more than 19 prior to 2006. Therefore the Act was not applicable to the appellant prior to 2006. Hence, the appeal was allowed and order of the EPF authority was set aside.

**(Reference: Labour Law Reporter, November, 2011.)**

## **International Labour Organisation**

### **15th Asia and the Pacific Regional Meeting, Kyoto, Japan, 4-7 December 2011.**

The 15th Asia and the Pacific Regional Meeting of the International Labour Organization was held from Sunday, 4<sup>th</sup> to Wednesday, 7<sup>th</sup> December 2011, in Kyoto, Japan at the Kyoto International Conference Center (ICC Kyoto).

The Meeting considered the challenges of realizing decent work across Asia and the Pacific.

Some of the important points highlighted in the meeting were as follows,

- Asia and the Pacific is the world's most dynamic region. Fast growth in a number of countries in the region has lifted family incomes and enabled millions of people to escape severe poverty. The region has made dramatic economic progress and also has been integrated into the global economy.

- However even in the periods of fastest growth, it has not generated enough decent work to reduce large numbers of working poor and huge informal economies.
- After the global economic and jobs crisis, the region quickly rebounded. But now, renewed financial turmoil in other parts of the world has again threatened economic and social developments of the region.
- Even before the crisis, fast growth in Asia and the Pacific was unevenly spread and inequalities in income and wealth widened in many economies. Many millions have risen above the lowest threshold of poverty, yet the region still accounts for 73 per cent of the world's working poor. Many remain vulnerable to natural and human-made shocks and disasters. Social protection systems do not yet cover effectively many of these people, despite recent important progress.
- Asia and the Pacific region has the world's most populous and a fast-growing labour force, whose enormous productive potential must be enlarged and utilized to eradicate poverty by progressively diminishing the scale of informal economies and encouraging the creation of decent jobs. Gender discrimination, especially unequal treatment and opportunities for women in the world of work, remain a major concern in our societies and must be addressed as a priority in order to reap the social and economic benefits of gender equality.

- International labour standards are important for helping countries and their citizens to become more inclusive socially, economically and politically. Social dialogue is important both to settle disputes and also to cooperate on agreed ways forward to grow sustainable enterprises, enlarge decent work opportunities, build social protection systems and establish employment arrangements that protect workers' rights.
- Social dialogue and cooperation are the watchwords for our renewed drive to meet the needs of ILO constituents and fulfill the goals of the Asia and Pacific Decent Work Decade through national, regional and global action.

**ILO and EU to launch new project on improving safety and health at work**

The International Labour Organisation (ILO) and the European Unions (EU) are launching a new project aimed at reducing occupational accidents and diseases in six countries in Eastern Europe (Ukraine and Moldova), Africa (Zambia and Malawi) and Central America (Honduras and Nicaragua) to improve the safety and health of workers.

The new project – called “Improving safety and health at work through a decent work agenda” – will play a part in a more inclusive and productive society by seeking to advance safety and health at work through a systematic approach engaging commitment on the highest political level.

The project will include activities to convince government officials to include occupational health and safety concerns as part of national development plans, to stimulate high level decision makers at government level to allocate funds for occupational safety and health, to encourage stakeholders to take the necessary steps to improve occupational safety and health. One of the main activities will be to support the national tripartite constituents in developing national occupational, safety and health (OSH) action plans based on the needs and gaps in these countries. Seminars for national policy-makers will be held to sensitize them on OSH and push for high level national support.

Two key products will be developed as an integral part of the project: a methodology to determine more accurately the number of occupational accidents and work-related diseases in each country, as well as a practical tool to enable countries to make their own calculations of the costs of not improving OSH conditions.

Other activities include, depending on the local context – training of OSH inspectors and awareness-raising campaigns in conjunction with the annual World Day on Safety and Health at Work and the EU Safety and Health at Work week. This will involve the development of tools

such as brochures, newsletters, promotional items, public events and visits, audiovisual and multimedia presentations targeting the general public. A specific website displaying updated information on the project will be created.

In addition, the ILO and European Commission will organize a global conference to disseminate guidance on OSH programmes and exchange good practices, including the findings of country programmes.

Finally, advocacy tools developed by the project will be promoted by ILO Safe-Work through its on-line CIS database and information service. Findings will also be endorsed by both the ILO and EU regional networks.

The countries covered involved were chosen based on the priorities identified in the decent work country programmes (DWCPs) of these countries. The willingness expressed by the constituents to participate in the implementation of the project will ensure successful results and improvement in OSH.

Safety and health at work remains a major global concern. Some 2.31 million people die around the world every year as a result of their work. This means that 6,500 workers die every day of the year from work-related accidents or illnesses. Of these, some 1,000 people go out to work in the morning or evening and simply don't return home because they die in occupational accidents.

**(Reference: [www.ilo.org](http://www.ilo.org).)**

## Labour Cases

**EMPLOYEES' COMPENSATION ACT, 1923 – S.30 – (Compensation falls due one month after the date of the accident and not from the date of adjudication of compensation by Employees Compensation Commissioner).**

By the impugned judgment and award, the commissioner under the E.C Act awarded compensation to the respondents with interest at 12% per annum from 15-12-2004 i.e. after one month from the date of the accident i.e. 14-11-2004. Feeling aggrieved thereby the appellant Corporation filed an appeal in the High Court contending that compensation does not fall due unless and until there is adjudication by the Commissioner. Hence according to the appellant the date on which compensation fell due was 24-9-2010 i.e. the date on which the award was passed. On the other hand it was submitted by the respondent that compensation had fallen due on the date of cause of personal injury to the workman.

The High Court referred to and followed the decision in Pratap Narayan Singh Deo's case (1976) 1 SCC 289 which is a decision rendered by four Judges of the Supreme Court wherein it was held that compensation is payable from one month after the date of the accident and not from the date on which adjudication is made by the Commissioner. In view of this position the appeal was dismissed.

-H.C.Bom. CLR III 2011 P.755, Municipal Corpn. Amravati v. Pratibha Kashinath Gajbhiye & Anr.

**INDUSTRIAL DISPUTES ACT, 1947 – SECTIONS 2(k), 2(S) & 10 –  
(An Anganwadi helper appointed on payment of honorarium is not a workman under I.D. Act.)**

The respondent was employed as Anganwadi helper on 31-5-1998 on honorarium basis with a specific condition that she is not employed in the regular establishment. As the respondent was irregular in performing her duties and used to remain unauthorisedly absent, her honorarium was deducted. She was issued notices and after hearing her, she was relieved. Being aggrieved thereby the respondent approached the Labour Court and the Labour Court by way of an award directed reinstatement of the respondent with 100% back wages. Feeling aggrieved by the award, the appellant challenged the same by filing a writ petition in the High Court and the Single Judge confirmed the award passed by the Labour Court. Hence the appellant filed a Letter Patent Appeal.

The High Court relied upon the decision in State of Karnataka v. Amirbi 2007(11) SCC 681 wherein it was held that the persons working as Anganwadi workers do not hold civil post and that they are not industrial workmen. In view of this position the appeal was allowed and the award passed by the Labour Court was quashed.

-H.C.Guj. III 2011 P. 733, Patdi Taluka Panchayat & Ors. V. Zebunnisha Nathumiya

**INDUSTRIAL DISPUTES ACT, 1947 – SECTIONS 25F & 25H - (For calculating services of daily wagers, weekly holidays and public holidays have to be excluded as distinct from temporary workmen)**

The appellant was engaged by the respondent Municipality as a daily wager. He was discontinued as daily wager which gave rise to the dispute under the Industrial Disputes Act at the instance of the petitioner. The matter was referred to the Labour Court for adjudication. Before the Labour Court evidence was brought on record that the appellant has worked for 215 days with the respondent Municipality. However, the Labour Court added the weekly offs and holidays in the aforesaid 215 days of actual work of the appellant and concluded that the workman can be said to have worked for 240 days and as the procedure under sec. 25F of the I.D. Act was not followed the termination was held as bad in law. This award was challenged by the respondent Municipality by filing a writ petition in the High Court and the Single Judge found that the finding of the Labour Court for completion of 240 days was contrary to the record. Hence it was held that the appellant had not completed 240 days and therefore there was no question of following the procedure under secs. 25F, 25G and 25H

of the I.D. Act. Aggrieved by the said order the appellant filed Letters Patent Appeal in the High Court.

The Division bench observed that if a person is engaged as a daily wager, he cannot be put at par with person who has been engaged or who has worked on temporary basis for a particular span. In the case of the daily wager, if one has to claim the benefit of section 25F of the I.D. Act, it will be required for him to prove that he had actually worked continuously for a period of 240 days and while counting 240 days, the weekly holidays which are available to the permanent employees or in a regular set up or to employees appointed on temporary post cannot be considered. The same situation will prevail for exclusion of public holidays in case of daily wagers like persons appointed on temporary basis. Hence LPA was dismissed.

-H.C.Guj. LLN(4) 2011 P. 205, Ranjit Natwar Lal Chavan v. Morbi Nagar Palika

**CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970 - Ss.10 (1) & 23 - (In the facts and circumstances of the case the respondents workers were held to be the workers engaged by the contractor).**

There was an industrial dispute between the petitioner and its five workmen who are respondents, in connection with the alleged retrenchment of those respondents. The dispute was referred to the

Industrial Tribunal for adjudication which passed an award in favour of the respondents workmen and directed the petitioner to reinstate them with full back wages. Feeling aggrieved thereby the petitioner challenged that award by filing a writ petition in the High Court. It was contended on behalf of the petitioner company that there was no evidence to show that the respondent had applied for appointment to the company. It was pointed out that no pleas of the contract being sham were raised. The respondents were never interviewed for appointment on any post and they were not paid directly by the company which had no disciplinary control over them. On the other hand it was contended on behalf of the workmen respondents that they were paid bonus in terms of the Payment of Bonus Act. The provisions of the Bonus Act do not contemplate payment of bonus to contract labourers and this itself is sufficient to lead to the irresistible conclusion that the respondents were the direct employees of the company.

The High Court observed that no notification under sec. 10 of the Contract Labour Act had been issued prohibiting employment of contract labour in the department of the company where the respondents were in fact employed. No finding was given by the Industrial Tribunal that the contract of employment was a sham contract. The High Court relied upon the decision in International Air Port Authority of India v. International Air Cargo Worker's Union 2009 (3) LLN 489 Supreme Court and observed that in the instant case there is no evidence of payment being made to the respondents by the company directly. Whatever amount was paid to them was through

M/s. Kaycee Industries with whom the petitioner had entered into a contract. The company did not exercise disciplinary control over the respondents. The primary control over the respondents was resting with the contractor. In view of this fact, the High Court was of the opinion that the respondent could not validly claim to be direct employees of the petitioner company and therefore the writ petition was allowed and the award passed by the Industrial Tribunal was set aside.

-H.C.Cal., LLN (4) 2011 P. 158, Indian Iron and Steel Co. Ltd. V. State of West Bengal & Ors.

**(Reference: aps Labour Digest, December, 2011.)**