WORKSHOP

(30.11.2014)

INDUSTRIAL & LABOUR COURTS

(MUMBAI -PUNE REGIONS)

SUBJECT 1 (a)

EFFECT OF CONSTITUTIONAL LAW LAID DOWN IN UMADEVI'S AS FAR AS ITEM 6 OF SCHEDULE IV OF MRTU & PULP ACT, 1971 IS CONCERNED & LATEST CASE LAW ON THE ISSUE OF PERMANENCY

Q No.1 : Whether a workman can invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following proper procedure for selection, and in cases where consultation with Pubic Service Commission was necessary ?

Ans :- A claim based on mere legitimate expectation or reasonable expectation without anything more cannot ipso facto give a right to invoke the principles. (*Union of India and another Vs. Arul mozhi Iniarasu and others*; reported in 2011 (9) SCR 1 Supreme Court). In the decision in Umadevi's case also it is clearly laid down that in such case theory of legitimate expectation cannot be invoked.

Q No.2 : Whether a workman on daily wages or a temporary appointee or a contractual appointee has fundamental right to be absorbed in service ?

Ans :- There is no fundamental right to be absorbed in service. In Umadevi's case also the Apex Court refused to accept the argument that the right to life protected by Article 21 of the Constitution of India would include right to employment. At present, right to employment itself is not a fundamental right. The absorption certainly would not be a fundamental right.

Q No.3 : If no recruitment policy or rules are framed, whether the decision in Umadevi's case would be applicable in a case for regularization ?

Ans :- Absorption, regularization, permanency of casual, daily wagers etc. appointed/recruited de-hors the constitutional scheme of public employment is impermissible and violative

of article 14 and 16 of constitution. (Chief Executive Officers, Pondichary Khadi Industry v/s Aroquia Radja – 2013 I CLR 1057- SC). In Umadevi's case also it has been held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. This means proper competition amongst the needy candidates would also be necessary.

Q. No.4 : Whether an adhoc appointee or an appointee engaged on piece rate basis for certain clerical work, and discontinued on completion of the work, is entitled to reinstatement or regularization of the services rendered for the period ranging from one year to two years ?

Ans :- The appointments in either of the two categories has come to end due to completion of work. The concerned will not be entitled to reinstatement or regularization.

Q.No.5 : Whether the powers of Industrial Court & Labour Court under MRTU & PULP Act are denuded by the judgment in case of Umadevi ?

Ans :- No. Answer to the question can be found in *M.S.R.T.C. Vs. Casteribe Rajya Parivahan Karmachari Sanghatana*; reported in 2009 IV LLJ 286 Supreme Court.

Q. No.6 : Whether the judgment of the Hon'ble Supreme Court in *State of Hariyana Vs. Piara Singh* (1992 4 SCC Pg.118) has been overruled in the judgment in case of Uma Devi ?

Ans :- The Constitution Bench has only disapproved last of the directions given in *State of Hariyana Vs. Piara Singh*. The direction relating to making permanent, the adhoc or temporary employees engaged without following regular recruitment procedure, was held to be contrary to the Constitutional Scheme. Certain principle was disapproved by the Constitution Bench and to that extent the decision in Piara Singh's case loses the status as a precedent.

Q. No.7 : Whether Industrial Court can give directions to create post and regularize an employee ?

Ans :- In case of Public Employment the creation of post is not within the the domain of judicial functions. These are the functions of the executives. In such case no direction can be given. (MSRTC v/s Casteribe Sanghtana – 2009 4 LLJ 286 SC), (Indian Drugs & Pharmaceutical v/s Workmen (2007 1 SCC 408 SC)) and (Divisional Manger Aravali Golf Club & anr. v/s Chander Hass – 2008 1 SCC 683 SC).

Q. No.8 : If an employee is continued in service by virtue of an order of the Court, whether he would be entitled to be absorbed or made permanent in service ?

Ans :- If the employment is continued by virtue of an interim order then on the basis of such service period no claim can be made because the employment is forced by an order of the Court. It would be litigious employment as observed in Umadevi's case.

Q. No.9 : Whether under the Model Standing Orders on completion of 240 days' continuous service or more, a casual workman /temporary workman has to be or should be made permanent ? Whether completion of 240 days is requirement to attract item 6 of Schedule IV to MRTU & PULP Act ?

Ans :- A temporary workman after completion of 240 days' uninterrupted service becomes entitled to be made permanent as per Clause 4 (c). However, again in the case of Public Employment question of existence of sanctioned vacant post and other requirement laid down in Umadevi's case will have to be taken into consideration.

In order to attract Item 6, there has to be continuance in service. There has to be service for substantial period of a year, if not 240 days or more in each of the years.

Q.No.10 : Whether insufficient funds and absence of sanctioned post could be reasons for not granting permanency to an employee, and whether Court can direct permanency in such a case, if it is otherwise established on other grounds ?

Ans :- In Public Employment permanency cannot granted in the absence sanctioned post. Insufficient funds by itself, may no be sufficient to reject the claim, if it is proved otherwise in all respects.

Q.No.11 : Whether the unfair labour practice under item 6 is one of continuing nature ? Whether complaint relating to item 6 can be rejected on the ground of limitation ?

Ans :- The cause of action is a continuing cause of action. A complaint relating to Item 6 cannot be dismissed on the ground of limitation, though the relief may be moulded to some extent. (Mah State Co-operative Cotton Growers... v/s Mah. State Co-operative... 1993 III LLJ 140- Bombay).

Q.No.12 : Whether engagement of casual, badli or temporary employees could be termed as illegal, unfair or improper ?

Ans :- No. Even the Model Standing Orders provides for such appointment in case of need.

Q.No.13 : On whom a burden of proof lies to prove the unfair labour practice under item 6 ?

Ans :- Initial burden is on the workman.

Q.No.14 : Whether decision in Umadevi's case has any effect on the powers of Industrial & Labour Courts for passing appropriate interim orders u/s 30 of MRTU & PULP Act ?

Ans :- The decision has no effect, but the interim order should be appropriate.

Q.No.15 : Whether Standing Orders have statutory force ? Whether violation of the Standing Orders would amount to an unfair labour practice on the part of the employer ?

Ans :- Standing Orders are statutorily imposed conditions of service . They can hardly be said to be statutory provisions. (Rajasthan State Road Transport Corporation v/s Krishna kant -1995 AIR 1715 SC) Violation of the Standing Order

would amount to the unfair labour practices on the part of employer.

Q.No.16 : Whether the employer can contend that the employee is not entitled to permanency on the ground that the recruitment was not in conformity with the Standing Orders existing for recruitment ?

Ans :- The employer may contend so. In MSRTC v/s Castribe Sanghatana case the standing order was made by the corporation. In the facts, it was found that the workers were exploited, and the court observed that it was too late to urge that standing order was not followed at the time of appointment.

Q.No.17 : Whether employment of an employee can be temporarily protected by an interim order, when *prima facie*, the initial appointment itself was illegal ?

Ans :- Before granting an interim relief, all aspects are required to be considered *prima-facie*. If initial appointment is found to be illegal, Court would be very slow in protecting the employment.

Q.No.18 : What is the difference/distinction between regularization and permanency in service in the light of the judgment in Umadevi's case ?

Ans :- In Umadevi's case there is reference to decision B. N. Nagarajan and others case in which it is held that words “regular” or “regularization” do not connote permanency and cannot be construed so as to convey an idea of the nature of tenure of appointments. These terms are calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. Granting permanency of employment is totally different concept and cannot be equated with regularization. Reference may be made to State of Mysore v/s S V Narayanappa (1967 (1) SCR 128 SC) and R N Nanjundappa v/s T Thimmiah & anr. (1972 (2) SCR 799 SC)

Q.No.19 : An employee was employed by the Forest Department on a permanent post. After termination, the Labour Court directed reinstatement of the said employee with all benefits. Whether such a direction would amount to infringement of constitutional guarantee of equality in Public Employment ?

Ans :- The question presupposes that the appointment was on a permanent post and as per procedure. The Labour Court granted the relief obviously because the termination was illegal. Therefore, there should be no question of infringement of equality in Public Employment.

Q.No.20 : Whether an unrecognized union can file complaint of unfair labour practices under item 6 ?

Ans :- Such complaint could be filed only by recognized / representative union and if such union does not exist then by the concerned employee. Unrecognized union cannot file complaint relating to Item 6 of Schedule IV. Reference may be made to the Judgment in *M. S. R. T. C. Vs. Casteribe Rajya P. Karmachari Sanghatana*; reported in 2009 IV LLJ 286 Supreme Court, and *Associate Research Director, Regional Fruit Research Station Vs. President, Sindhudurg Shramik Sangh*; reported in 1997 III LLJ 734 Bombay.

Q.No.21 : Whether a daily wage employee/worker can claim permanency ? Under what circumstances can such permanency be granted ?

Ans :- In case of Public Employment, normally a daily wager is not appointed against a sanctioned post, and is generally not a holder of a post. No direction can be given to continue daily wager, casuals, or adhoc employee unless there exists some rule. It is well settled there is no right vested in a daily wager to seek regularization. A Tribunal can not direct continuance of daily wager till superannuation. (Indian Drug & Pharmaceutical v/s Workmen -2007 (1) SCC 408). There is distinction between daily rated worker and a worker holding post. (Assistant Engineer Rajasthan Development corporation v/s Gitam singh 2013 II SCC (L & S) 369). Then as said in Pondichary Khadi Industry case permanency of daily wagers would not be permissible unless the

recruitment was in accordance with the constitutional scheme of public employment.

Q.No.22 : When a temporary or casual worker is continued for a period beyond the period of appointment in the appointment letter whether he can ask for permanency or absorption in regular service, and if yes, whether it can be granted ?

Ans :- This by itself may not be sufficient to claim or grant the relief.

Q.No.23 : Whether a daily wages employee working in Municipal Corporation for years together can be made permanent ?

Ans :- Appointment in Municipal Corporation is also a Public Employment. Normally, daily wage employee is not engaged on a sanctioned vacant post. In case one is engaged, he can claim permanency and permanency can be granted, if a sanctioned vacant post is available and the basic appointment was not in breach of recruitment rules, and other requirements laid down by the Apex Court are fulfilled.

Q.No.24 : If an employee has worked continuously for five years, whether Industrial Court can grant permanency as per the provisions of Kalelkar Award / settlement ?

Ans :- An employee who is governed by Kalelkar Settlement can be granted permanency - like relief which is called “Converted Regular Temporary” after 5 years of service, and “Converted Regular Permanent” after 10 years. Umadevi's case will not come in way of such cases because there is a settlement for granting the relief in question. For eligible employee a supernumerary post is created.

Q.No.25 : What is meant by back door entry ? If the Municipal Corporation does not comply with the provisions/requirements mentioned in Para.44 of Umadevi's case, whether the Industrial Court can grant permanency ?

Ans :- An appointment made without following appropriate procedure under Rules / Government Circulars and without advertisement or without inviting applications from open market would be in breach of Article 14 and 16 of the Constitution. Such appointment would be a back door entry. Reference can be made to *Co-operative Bank Limited Bhopal Vs. Nanuram Yadav and others*; reported in 2007 (8) SCC 264 Supreme Court.

In case of an eligible employee who fulfills the criterion laid down in the decision, it becomes his right to be regularized in the process. If the Corporation does not implement the directions, the Industrial Court may find out if it amounts to unfair labour practice and if yes, order only regularization.

Q.No.26 : Whether existence of sanctioned post is necessary even in banking industry for granting permanency ?

Ans :- Existence of sanctioned post would be necessary in Public Sector Banks, and may be in some Co-operative banks, the complement of which is approved by the State Government.

Q.No.27 : In what manner para.22 of the judgment of the Hon'ble Supreme Court in case of *Chief Conservator of Forest & anr. Vs. Jagnnath Maruti Kondhare* (1996 I CLR Pg.680) is to be interpreted while deciding Forest Department Cases ?

Ans :- Para 22 is about burden of proving the object of continuing as temporary for years etc. The Court has said about permissibility of drawing inference about the object behind continuing as temporary. Appropriate inference can be drawn depending upon the facts of the case.

Q.No.28 : Can an employee who has served for a long period, be discharged from the service only on the ground of non-observance or non-compliance of the recruitment procedure ?

Ans :- If the employment is the Public Employment, the employer may decide to discharge the employee. However, if it amounts to retrenchment the relevant provisions of the Industrial Disputes Act will have to be complied with.

Q.No.29 : If a group of employees approach Court, and get justice/ permanency, whether the others who are not before Court, can compare themselves with the group, and claim permanency ?

Ans :- Everything depends upon the facts and circumstances. The others will have to prove the case, and their case will have to stand the test of requirements of law in the light of the decisions of the Apex Court. Normally, merely because others have been regularized does not give a right to be regularized. An illegality, if there be, cannot be perpetuated. (*State of U.P. Vs. Rekha Rani*; reported in 2011 II CLR 17 and *State of Rajasthan Vs. Dayalal*; reported in 2011 II SCC 429) Supreme Court.

Q.No.30 : Whether the principles laid down in Umadevi's case are applicable to cases under MRTU & PULP Act & Industrial Disputes Act pending before Labour and Industrial Courts ?

Ans :- The principles will have to be kept in mind while dealing with the cases relating to public employment.

Q.No.31 : What should be the considerations while deciding the date from which permanency status/benefits are to be given ?

Ans :- In case of a claim which is otherwise tenable and proved, the considerations could be, under what provisions of law permanency is being given. Whether clause 4 (c) of Model Standing Orders is applicable. Since when the sanctioned vacant post exists. Sometimes the fact that the benefits are to be given from public exchequer is also relevant.

Q.No.32 : Whether the ratio laid down in Umadevi's case is applicable only in public employment ? Whether it applies to cases relating to Private Companies/establishments or private sector ?

Ans :- It does not apply to private companies / establishments or private sector.

Q.No.33 : What is hall mark/distinction between the contractual employees and the employees under the Contract Labour (Regulation & Abolition) Act, 1970 ?

Ans :- Contractual employee means employee engaged directly by the employer on the basis of some contract; like contract for particular period or a contract of employment for a particular job. There is direct employer-employee relationship in such employment. Under the Contract Labour (Regulation and Abolition) Act, there is a licensed contractor hired by principal employer. The contractor employs workers. There is no direct employer-employee relationship between the principal employer and such workers.

Q.No.34 : What the Hon'ble Supreme Court expects from the Courts while deciding the cases in the light of judgment in Umadevi's case ?

Ans :- The expectations are reflected in the decision.

Q.No.35 : Whether Government can make temporary appointments or engage workers on daily wages, in the absence of permanent sanctioned post ?

Ans :- It can make such appointments considering the economic situation in the country and the work to be got done.

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SUBJECT 1(b)

AMENDED PROVISIONS OF THE EMPLOYEES COMPENSATION ACT, 1923 - DIFFERENT ASPECTS RELATED TO THE EMPLOYEES' COMPENSATION ACT, 1923 - PRACTICE, PROCEDURE, INTERPRETATION OF VARIOUS PROVISIONS OF EMPLOYEES' COMPENSATION ACT, 1923

Q 1 : Whether remarriage of a widow disentitles her from claiming compensation under Employees Compensation Act, 1923 ?

Ans : No. Eligibility is to be seen at the time of death of workman and subsequent event like marriage has no bearing.

As per Section 2 (1)(b) of the Employees' Compensation Act dependent means any of the following relatives of the deceased (Employee, namely (i) widow, a minor (legitimate or adopted son, an unmarried legitimate or adopted daughter or widowed mother.)

Thus, widow is dependent. Her dependency at the time of accident shall be considered. Payment of compensation is governed by provision of the Act. In ***Sohanbeer V/s. Workmen's Compensation Commissioner; reported in 2007 II CLR 400 (All. H. C.),*** it was held that the findings of the fact that the widow was the dependent and was alone entitled to compensation cannot be disturbed even if she has remarried.

Q 2 : If there is a stipulation in the insurance policy that the Insurance Company is not liable to pay interest, whether the insurance company can be made liable to pay compensation with interest ?

Ans : No. Statutory liability under Employee's Compensation Act is on the employer. Insurance company cannot be forced by Court to take liabilities in absence of statute. An insurance is a matter of contract between the insurance company and insured. They are entitled to provide by contract that they will not take on liability for interest. ***P. J. Narayanan V/s. Union of India and Ors. (2006 (5) SCC 200)***

In the recent citation ***2014 LLR 854 SC Manju Shakar & Ors. V/s. Mahesh Miyan & Ors.,*** it is held that if insurer fails to plead about existence of such a clause relating to non-payment of interest in the contract of insurance or does not lead any evidence in this respect before the Commissioner such a plea to be taken in appeal is not sustainable.

Q 3 : Does negligence of a Driver disentitle him to claim compensation under Employees Compensation Act ?

Ans : Mere negligence of a driver will not dis-entitle him to claim compensation in case of death or permanent disability. However, if the driver is negligent in performing his duty and sustain partial disability then he may not be entitled to receive compensation.

Q 4 : Whether the amended provision relating to limitation under the Employees' Compensation Act is mandatory ?

Ans : Initially, the limitation period for preferring claim before Commissioner was one year and it was mandatory in nature.

However, as per Section 10 (1) of the Employee's Compensation Act no claim for compensation shall be entertained by the Commissioner unless notice of accident has been given within two years of occurrence of the accident or in case of death within 2 years from the date of death. Provisions of Limitation Act become applicable to preferring of claim before Commissioner. ***AIR 1977 SC 282*** Whether the claim is preferred after expiry of Limitation period the entire period of delay has to be explained. The Law of Limitation has to be applied with all its measures, and claim made after inordinate delay cannot be entertained unless such delay is satisfactorily explained ***2003 WLC (Raj.) (U.C.) 695***.

Q 5 : Is it permissible for an employee to recover compensation payable under Employees' Compensation Act by filing a civil suit ?

Ans : The Act permits any employee to recover compensation payable under the Act by filing suit in a Civil Court for damages or by filing claim before Commissioner for Employee's Compensation. Section 3 (5).

The Scheme of the Act is not to abrogate a workman's common law cause of action but to enable him if he desires to get a speedy remedy for the injury suffered by him. But in so enabling him the Act sees to it that he does not get double benefit ***(1982) 2 Malayan L. J. 145***.

Q 6 : Is it permissible for a Commissioner to correct mistake appearing in a judgment already delivered ?

Ans : Yes. Under Rule 32 (2) of the Employee's Compensation Rules, a Commissioner can correct any clerical or arithmetical mistake arising from any accidental slip or omission.

*If the Commissioner committed an apparent error of law in invoking jurisdiction which was not vested in him. Rule 32 of the Employee's Compensation Rules 1924 clearly lays down that once the judgment is signed and dated and the decision is pronounced by the Commissioner, no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission . (**Nesha Vs. Gammon India Ltd. 2006 I CLR 323 (Guj. H.C.**)*

Q 7 : Whether the Commissioner is competent to grant compensation higher than what is claimed by a claimant ?

Ans : Yes. It's a statutory right under Employee's Compensation Act, 1923. The Commissioner is required to calculate the Compensation and direct the Employer to deposit the same. After depositing the amount the deficit court fee, if any, can be recovered, while disbursing the amount to claimant.

*A workman cannot be cabined, confined and cribbed because he had claimed a lesser amount of compensation. That may be due to an error in calculation or like reasons. Be that as it may the language of the statute is clear and the message cannot be missed. The workman is entitled to get what the statute entitles him to get. (**Mohammad Koya Vs. Balan, 1987 I CLR 96.**)*

Q 8 : Whether an employee becoming unfit for certain work due to injury caused in the course of employment, who refuses to do alternate job, can still claim compensation for the injury which is permanent disability ?

Ans : Yes. It is not a gratuitous payment nor is exgratia. It is not a assistance provided to the employee. It is a compensation on account of injury and becoming unfit for the work, he was performing at the time of accident. The disability depends, if it is permanent total than he is entitled to compensation for 100% loss of earning capacity. If it is less, then proportionate.

Q 9 : Whether in view of the amendments on exclusion of restrictions relating to “persons working in clerical capacity” in Schedule II, the term employee has to be considered widely, so as to include all classes/cadres of employees including “Director” ?

Ans : No. As per Schedule II list of persons who subject to the provision of Section 2 (1) (N), are included in the definition of 'Workman'. As per provision (ii) 'Employee' otherwise than in clerical capacity means who is employed in any kind of work incidental to or connected with any such manufacturing process or with the article made, any steam, water or electrical power is used.

(XIX) in generating transforming or supplying of electrical energy or in generating or supplying of gas. etc.

Q 10 : When a Driver is engaged for one day and he meets with an accident, whether employer-employee relationship is established ?

Ans : Yes.

The owner had a definite control over the person. The person was driving the vehicle on the direction of the owner of the vehicle. His engagement for one day only will not throw him out of the definition of the workman. The employer-employee relationship is also established. ***State of Kerala Vs. Khadeeja Beevi, 1988 I CLR 333***.

*(****New India assurance Co Ltd Vs. Mohankumar Sahoo, 2004 II CLR, 118 Orissa High Court****.)*

Q 11 : In the absence of a provision in the policy, whether medical reimbursement can be claimed from the Insurance Company ?

Ans : No. Since the liability is contractual.

Q 12 : What is the doctrine of "added" peril ?

Ans : Added Peril - It means when workman does something other than the assigned work by the employer to him, and the work involves risk for which the employer cannot be held liable.

It contemplates that if a workman while doing his masters' work undertakes to do something which he is not ordinarily called upon to do and which involves extra danger he cannot hold his master liable for the risk arising there from.

The doctrine of added peril dis-entitles an injured worker from compensation on the ground that he had taken a greater

risk than he had been required by his employer to assume.

Where the injury is not caused to workman by an accident arising out of and in the course of employment, he/she is not entitled to get any benefit or compensation under the Employee's Compensation Act, 1923.

Q 13 : Whether employment given to an heir of deceased workman would disentitle him to claim compensation on account of the death of the deceased due to accident ?

Ans : In view of Section 17 of the Act in no case there is an escape for the employer from paying compensation under the Act which prohibits contracting out as held in ***Anumary V/s. Commissioner of Workmen's Compensation 2003 (2) LLN 202 (Bom. H. C.)***

Q 14 : Whether the provisions of Code of Civil Procedure & Indian Evidence Act are applicable to proceedings under Employees Compensation Act ?

Ans : *The Commissioner under Employee's Compensation Act, 1923 is not a Civil Court and is* ***not*** *bound by the provisions of Civil Procedure Code or that of the evidence Act. He is not bound to follow the procedure prescribed for trial of cases in civil courts nor he is bound by the strict rules of evidence.* ***1987 I CLR 311 Surakhia Vasava Vs. Ahmad Musa***.

The Evidence Act as such does not apply to the proceedings under the Act, as has been held in ***Union of India Vs. T. R. Varma (AIR) 1987 S. C. 882***, and ***Burawal Sugal Mills Ltd. Vs. Ranjen (1982-LLJ-84-I)***. *The Act is a beneficial legislation intended to give some*

security to the workman in certain types of employment. Indeed it contains a sort of mini-insurance scheme. The liability of the employer under the Act is conceptually quite different from the liability under tort. All these facts, therefore, call for a broad and liberal construction of the Act, lest its evident object is defeated.

2008 II CLR 887 Omprakash Vs. Ranjit Kaur; Supreme Court of India, wherein it is held that *for deciding compensation, the Commissioner can lay down his own procedure and he can rely on the documents produced before him. Civil Procedure Code and Evidence Act are not applicable.*

Q 15 : Compensation is deposited with the Commissioner. The dependent entitled to get the compensation dies. Whether the compensation can be paid to his heirs, and without requiring production of succession certificate ?

Ans : Yes.

Succession certificate is not required in a proceeding under Section 8 for distribution of the compensation amount because proceeding under the Employee's Compensation Act is not a proceeding under the law of succession, nor is it a civil suit. Remedy lies in sub-section 8 of Section 8 of the Employees' Compensation Act. What is to be seen is whether claimant is dependent of the deceased person and nothing more.

Q 16 : Under what circumstances the insurer can be held liable for penalty ?

Ans : Penalty is imposed on the employer because of his unjustified delay and due to his own personal fault. *The insurance*

*company is therefore, not liable to reimburse the penalty amount. As per Section 4-A(3)(b) it is the liability of the employer. (**Ved Prakash Garg Vs. Premi Devi, 1997 II CLR 938 (SC)**).* Insurer is not liable for penalty for default of employer (LR Ferro Alloys Ltd. Vs. Mahavaira Mahato (2001 ACJ 645 SC)]

Q 17 : When the compensation deposited is inadequate/less considering the wages and disablement, what is the proper remedy/procedure to claim enhancement ?

Ans : When the compensation is deposited is inadequate considering the wages and disablement, then the office of the Commissioner sends notice to Employer informing that compensation amount deposited is less than the amount of compensation payable as per provisions of the Employee's Compensation Act and asks him to deposit in Court Balance amount. If the employer fails to deposit the balance amount then the Commissioner informs the claimants at their address. Claimants are at liberty to file an application under the provisions of the Employee's Compensation Act to claim the balance amount. The Commissioner while deciding the matter on merits, can award the balance amount to the injured employee or to the dependents of the deceased employee together with interest and penalty by applying the provisions of law to the facts of the case.

Q 18 : Whether the other dependents in the original distribution proceedings can claim compensation payable to a dependent who dies and the money is in the fixed deposit ?

Ans : Yes. If they are legal heirs and dependents.

Q 19 : Whether compensation amount can be recovered by executing recovery warrant through bailiff of the Court ?

Ans : Yes. As per Section 31 of the Act, the Commissioner is empowered to do so. Commissioner shall be deemed to be a public officer within the meaning of Section 5 of **Revenue Recovery Act 1890**.

Q 20 : Whether Insurance Company is liable or can be asked to pay interest when no notice was issued to the insurer demanding interest ?

Ans : Yes. Insurer is the indemnifier of the insured.

*If the employer is aware of the accident, no notice is required. Section 10 of the Employee's Compensation Act is very clear which contemplates notice to the employer but not to the insurer of the employer. Even from fourth proviso to Section 10 it is seen that in cases of accidents resulting in death of an employee and when such accident occurred in the premises of the employer or at any place where the workman was working under the control of the employer or any person employed by him, non-issuance of notice is not a bar for filing claim. In this case accident admittedly occurred out of and during the course of employment when the driver of the employer was driving lorry. Since the deceased cleaner died when he was under the control of the driver employed by employer, the claim can be filed even without a notice to the employer. (**Oriental Insurance Company Vs. S. K. Bademiya 2004 LIC 686 (AP HC)***

Q 21 : In the proceedings which are ex-parte against the employer, whether insurer has a right to challenge the employer-employee relationship and wages ?

Ans : Yes, insurance company steps into shoes of employer and has a right to challenge employer-employee relationship and wages.

Q 22 : When the insurer does not plead about contractual liability or its terms and conditions in the written statement, whether an argument that liability is limited to contract can be considered/accepted ?

Ans : Yes, the applicant relies on the same insurance policy and the terms and conditions of the policy which is binding. However, in reported case law ***2014, S.T.P.L. (Web) Page No. 1849, Delhi High Court in Oriental Insurance Company V/s. Pappu Kumar Alias Pushpak Kumar & Others***, it is held that insurer liable to pay penalty. Contractually not liable to pay penalty and restricted to only compensation and interest, not proved, insurance company is liable to pay penalty, admitted facts that even in grounds of appeal before this Court no such ground has not filed its policy that it was contractually not liable to pay penalty, held that appellant was liable to pay penalty, appeal dismissed.

Q 23 : Whether a preliminary issue can be framed for deciding maintainability of the claim application, and the application can be disposed of without touching the other issues ?

Ans : Yes, if the question of law is only involved about maintainability of the application. Further, it depends upon facts of each case. It is well settled principle of law that all

issues should be decided to avoid delay to decide the matter as law laid down in D. P. Maheshwari case law. All issues can be decided together and if issue No. 1 about maintainability is taken up and answered in negative, it is not necessary to decide further issues.

Q 24 : Whether delay can be condoned under Employees Compensation Act ?

Ans : Yes, the Commissioner under Employee's Compensation Act has to decide application for condonation of delay liberally to do substantial justice i.e. whether applicant is entitled for compensation amount or not. Under Section-10 (1) applicant can apply for condonation of delay. Our Hon'ble High Court has held in Department of Telecommunication, Nanded V/s. Deelip, 2008 (116) F.L.R. page No. 275 (Bom), that separate application not required for condonation of the delay.

Q 25 : What is meant by notional extension of the employer's premises ?

Ans : Notional extension of the employer's premises means employer is liable to pay compensation for personal injury caused to the workman by accident occurring beyond his work hours and beyond his work place if there is nexus between the time and place of the accident and the employment of the workman.

Q 26 : Whether the starting point for payment of interest is the date of accident or one month after the date of accident ?

Ans : Starting point is the date of accident as held by four Judges' Bench of Hon'ble Supreme Court in Pratap Narain Singh Deo V/s. Srinivas Sabata, 1976, (1), S. C. C., Page No. 289. It is held

by Hon'ble Supreme Court that employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. One month time is given to deposit the amount. But on failure the employer would be liable to pay interest from the date of the accident. Followed in 2012, III, C.L.R., Page No. 6, Supreme Court, in oriental Insurance Company Limited V/s. Siby George & Others. Our Hon'ble High Court has also held that liability to pay compensation relates back to the date of accident and hence it was without saying that even the interest would be payable from the date of the accident and not from the date of adjudication, in Subhash Gajjanrao Kivare V/s. National Insurance Company Limited and Others, reported in 2014, I, C.L.R., Page No. 92.

Q 27 : What is the effect of failure to register agreement ?

Ans : Effect of failure to register agreement - Where a memorandum of any agreement, the registration of which is required by Section - 28, is not sent to the Commissioner as required by that Section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-Section-(1) of Section-4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

Q 28 : Whether minimum wages are applicable or could be considered for determining the monthly wages in view of Section 5 ?

Ans : An employee is entitled to receive atleast minimum wages as per notification under the Minimum Wages Act. Therefore, an employee is entitled to compensation amount on the basis of minimum wages, or actual wages, whichever is higher. The Commissioner would be competent to consider minimum wages.

Q 29 : Whether penalty of 50% compensation can be awarded against Insurance Company/contractor ?

Ans : No. Liability to pay penalty is due to the personal fault of the employer in not making the payment in time, and without justifiable delay. Insurance Company cannot therefore be made liable to reimbursement of the amount. The burden of penalty is required to be borne by the employer. ***Hon'ble Supreme Court in Ved Prakash Garg V/s. Premi Devi, 1997 II CLR Page No. 938 (SC)***, has held that insurance company is liable for interest alongwith compensation but not penalty. The contractor is liable to pay penalty.

Q 30 : Whether employer is liable to pay compensation when the deceased employee was on deputation ?

Ans : Yes, though he was on deputation, there was employer-employee relation in existence.

Q 31 : What is the difference between “out of employment” & “in the course of employment” ?

Ans : The words **"in the course of employment"** means the course of work which the workman is employed to do and which is incidental to it. The words **"arising out of the employment"** are understood to mean that during the course of the employment, injury has resulted from some risks incidental to the duties of the service, which, unless engaged in the duty owing to the muster it is reasonable to believe the workman would not otherwise have suffered. It means due to employment. The expression is not confined to the mere nature of employment but applies to the employment as such to its nature, its conditions, its obligations and its incident after held in Machinnon Machenzie & Company Private Limited V/s. Ibrahim Mahommed Issak, reported in 1970 A.I.R. 1906.

Q 32 : Whether an employee can claim compensation for accidental injuries under Employees Compensation Act & also under Insurance Policy or Mediclaim Policy ?

Ans : There is no legal bar to receive both the compensations under the Employee's Compensation Act and as well as under the Insurance Policy or Mediclaim Policy.

Q 33 : What are provisions to tackle with the negligence on the part of the employer in reporting the accidents/employment injuries to concerned authority, and of not depositing the compensation in the office of the Commissioner ?

Ans : Section 10-B of the Employee's Compensation Act provides that whereby any law for time being in force notice is required to be given to any authority by or on behalf of

employer of any accident occurring on his premises which result in death or bodily injury the person required to give notice shall within 7 days of death or serious bodily injury send the report to the Commissioner.

Section 10-A provides that where Commissioner receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may by registered post send notice to the employer requiring him to submit within 30 days of the service of notice a statement in the prescribed form giving the circumstances attending the death of the employee and indicating whether in the opinion of the employer he is or is not liable to deposit compensation on account of death.

Q 34 : What are the drastic changes made in the Amendment Act of 2009 ?

Ans : 1) By Act No. 45 of 2009 the name of the Act is changed to Employees' Compensation Act, 1923.

2) Definitions of workman 2 (1) (n) has been deleted.

3) Definition of Employee has been made wider Section-2 (1) (dd) Employees mentioned in Schedule-II are held to be an employee.

4) Section-4 (1) (a) amount of Rs. 80,000/- is increased to Rs. 1,20,000/-.

5) Section-4 (1) (b) amount of Rs. 90,000/- is increased to Rs. 1,40,000/-.

6) Explanation II was omitted in respect of salary of Rs. 4,000/- (No limit from 19.01.2010 to 31.05.2010).

7) Section-4 (-A) has been inserted regarding reimbursement of medical expenditure.

8) Amount of funeral expenses has been enhanced from 2,500/- to 5,000/- in Section-4 (4).

9) Section-4-A (3) and 3-A has been substituted regarding interest and penalty.

10) Section-25-A. Time limit for disposal of the disposal of cases.

Q 35 : When an employee dies in the premises of the employer, but was not actually doing work, whether compensation is payable ?

Ans : As per the doctrine of Notional extension of employment an employer is liable to pay compensation for personal injury caused to a workman by accident occurring beyond his working hours and beyond his work place if there is nexus between the time and place of accident and the employment of the workman.

Q 36 : What is the difference, if any between “permanent disablement” and “permanent loss of income/earning capacity”, or whether the two are same ?

Ans : The term permanent disablement means disablement of permanent nature which has reduced the earning capacity of the injured in every employment which he was capable of doing at the time of accident.

Permanent loss of income/earning capacity means loss or diminution of earning capacity due to injury.

Therefore, both are not same and required to be considered depending upon facts of the case.

Q 37 : What are defences available to Insurance Company in proceedings under Employees' Compensation Act ?

Ans : Insurance companies have been allowed no other defence except following :

1) Employer not liable-insurance company not liable,
2) Employer-employee relationship not established,
3) Employment during the course of and arising out of employment,
4) Not an employment injury,
5) Violation of terms of policy,
6) Use of vehicle for hire and reward without permit to ply such vehicle,
7) For organizing racing and speed testing,
8) Use of transport vehicle not allowed by permit,
9) Driver not holding valid driving license or have been disqualified for holding license,
10) Policy is void as the same is obtained by non-disclosure of material fact.

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