

## **Bill to amend Payment of Gratuity Act provisions**

The government on 18th December, 2017 introduced a bill in the Lok Sabha that will allow it to notify the period of maternity leave and gratuity that can be availed by employees under a central law.

The Payment of Gratuity (Amendment) Bill, 2017 was introduced by Labour Minister Santosh Kumar Gangwar in the House.

The Payment of Gratuity Act 1972 was enacted to provide for gratuity payment to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments. It is applicable to employees who have completed at least five years of continuous service in an establishment that has ten or more persons.

Gratuity amount is calculated on the basis of a formula which is 15 days of wages for each year of completed services, subject to the ceiling of Rs 10 lakh. This limit was fixed in 2010.

After implementation of the 7th Central Pay Commission, the ceiling of gratuity amount for central government employees has been increased from Rs 10 lakh to Rs 20 lakh. Generally, the ceiling under the Act follows that of the Central Pay Commission recommendations.

"Therefore, considering the inflation and wage increase even in case of employees engaged in private and public sector, the entitlement of gratuity is also required to be revised for employees who are covered under the Act.

"It has also been proposed to empower the central government to notify the ceiling proposed, instead of amending the said Act, so that the limit can be revised from time to time keeping in view the increase in wage and inflation, and future Pay Commissions," the Statement said.

However, some Trade unions have criticized the amendments in the Gratuity Act. According to them the word "ten lakh" is replaced with "amount as may be notified by the Central Government from time to time". The Unions said that the gratuity ceiling is not increased to Rs 20 lakh, but at the same time the already existing legal protection to claim Rs 10 lakh as Gratuity is removed.

The amended section 4(3) would be like this –

"Sec 4(3) – The amount of gratuity payable to an employee shall not exceed "such amount may be notified by the Central Government from time to time".

Once the law is enacted the Central Government become all powerful to decide the gratuity amount of every employee of an organization.

This is clear betrayal and abridgement of the employees' rights. There is no assurance in the bill that the Government will increase the gratuity. *TOI Dated : 18-12-2017 / BT 18.12.2017*

**Bill No. 205 of 2017**

## **Regulatory changes critical to create 1 crore formal jobs, says report**

According to the staffing firm TeamLease Services, a revamp of the regulatory ecosystem is extremely important to further improve the ease of doing business and raise the labour force participation in the formal sector. The top 10 regulatory changes that can bring about a shift in labour participation include consolidation of 44 central labour laws into 4 labour codes and a unique Enterprise Number (UEN) - creating a unique identifier at the company/legal entity level is a crucial

infrastructure for digital economy and ease of doing business - it said.

Other reforms include salary choice for employees. Under this, employees should have a choice of whether or not to contribute the 12 per cent employee contribution to the Provident Fund, and should have an option between ESIC or private insurance.

It further noted that the Shram Suidha Portal must adopt the PPC - Paperless-Presenceless-Cashless framework - in interactions between employers and the government, and employees and the government. Other reforms include the Factories Amendment Bill 2016, the Small Factories Act, the Amendments in Contract Labour and Regulation Act 1970, the Amendments in Industrial Disputes Act 1947, the Amendments in Trade Union Act 1926 and Adoption of the Model Shops and Establishment Act. According to TeamLease, nearly 100 per cent of net job creation in India in the past two decades came from small and low-productivity enterprises. About 90 per cent of labour force works informally and is deprived of social security benefits and a wage premium that can only be paid by formal sector employers.

*FE Dated : 20-12-2017*

## **Govt may bring back proposal to allow fixed-term employment**

The National Democratic Alliance (NDA) government is exploring the possibility of bringing back a controversial proposal to allow industries to hire workers on fixed-term contracts. The move, if given a go-ahead, will allow industries to employ workers for short assignments and terminate their services once the projects are completed.

The Union Cabinet had approved a special package for the footwear, leather, and accessories sector on December 15. The package included allowing fixed-term employment in these sectors "in order to attract large scale investments at global scale".

In October last year, the Ministry of Labour and Employment had notified changes to the Industrial Employment (Standing Orders) Central Rules, 1946, allowing the apparel manufacturing sector to hire workers on fixed-term contracts. Under fixed-term employment, workers are entitled to all statutory benefits available to a permanent worker in the same factory. The benefits include the same working hours, wages, and allowances. However, employers may not give notice to a fixed-term worker on non-renewal or expiry of his or her contract. In addition, employers can directly hire a worker for a fixed-term without mediation by a contractor.

"It is a 'win win' situation for both worker and employer as on one hand, it provides flexibility for employing workers as per the demands of the market and on the other hand, it ensures worker hired gets equal benefits and working condition at par with the permanent employee," the ministry of labour and employment had said in a statement in October last year, while announcing fixed-term employment in the apparel sector. Companies in seasonal work usually refrain from hiring permanent workers for project-based jobs because termination requires going through the process of retrenchment under the Industrial Disputes Act. This includes giving notice, paying compensation, and intimating the government.

The NDA government had mooted allowing fixed-term employment in April 2015 by issuing draft rules to amend the

Industrial Employment (Standing Orders) Central (Amendment) Rules, 2015. However, Bandaru Dattatreya, who was then labour and employment minister, had shelved the proposal last year after strong opposition from trade unions.

The previous NDA government in 2003 had allowed hiring fixed-term workers but the United Progressive Alliance (UPA) government in 2007, following pressure from central trade unions, scrapped it.

*BS Dated : 27-12-2017*

### **National employment policy on the cards in budget 2018**

Prompted by the rising unemployment in the country, the government in the next budget might introduce a national employment policy outlining a comprehensive blueprint to generate quality jobs in every industry.

The policy blueprint will be shaped by economic, social and labour policy interventions.

The policy is likely to be announced in the upcoming Budget, which will be the last one from the current Prime Minister Narendra Modi-led government before general elections in 2019.

Over 10 million youth join the workforce every year. But there are not enough jobs to engage them and thus, the unemployment issue has risen to the extent of electoral importance-used by opposition parties to attack the Modi-led government.

The job generation speed faced a six-year low in 2015 as only 135,000 new jobs were created compared to 421,000 jobs in 2014 and 419,000 in 2013, as per a quarterly industrial survey conducted by the Labour Bureau under the labour ministry.

Another significant aim of the policy would be to engage more workers in the country's organised sector.

The government is closely assessing the labour conditions and employment trends in the country in order to lay out specific targets and set up a monitoring system. The government is looking at include demographic composition of workers, employment challenges in different sectors, and the overall macroeconomic condition.

*Monecontrol Dated : 15-12-2017*

### **Chandra's New Year message to Tata staff: strive for simplification, synergy**

Nearly 10 months after taking charge as the Chairman of Tata Sons, N Chandrasekaran has spelt out 'simplification, synergy and scale' as the focus areas for the group going forward. This includes reducing complexity across businesses, leveraging collaboration between group companies and scaling up through growth, consolidation and collaboration.

"In order to achieve peak performance, we must focus on three things: simplification, synergy and scale," Chandra said in a New Year message to group employees.

Chandra has taken some tough decisions including exiting the mobile services business and removing cross-holding between group companies.

*BL Dated : 27-12-2017*

### **Hiring activity grows 16% YoY in November : Naukri.com**

Hiring activity registered a 16 per cent growth in November over last year, primarily driven by growth in the non-IT sector, and outlook for jobs looks bullish for the coming months, says a report.

Industry-wise, jobs in construction/engineering industry went up 46 per cent while jobs in auto sector saw a growth of 39 per cent in November this year over November 2016.

In the same period, jobs in heavy machinery and banking sector saw 30 per cent and 24 per cent growth in hiring,

respectively.

Of the 8 metro cities being tracked, 7 recorded an increase in hiring activity in November. The positive trend of job growth was also seen in smaller cities.

The index for Kolkata grew 51 per cent while Delhi NCR and Mumbai saw growth of 15 per cent and 16 per cent respectively. Bangalore however saw a dip of 3 per cent.

In terms of experience bands, entry-level job seekers having 0-3 years of experience and senior roles with experience requirement of more than 16 years increased 21 per cent in November this year as compared to November 2016.

base month with a score of 1,000 and the subsequent monthly index is compared with data for July 2008. *BL Dated : 26-12-2017*

### **No job creation road map by PM Modi's Economic Advisory Council so far**

The Economic Advisory Council to the Prime Minister set up recently has not laid down any road map for job creation and infrastructure financing, but has taken up wide ranging issues on macro economy, agriculture and health. The Council has held three meetings so far and deliberated on wide ranging issues including review of macro-economy, agriculture and rural development, skill upgradation, enhancing investments in health, among others, Minister of State for Planning Rao Inderjit Singh said in a written reply in Lok Sabha.

The targeted programmes to boost job opportunities, the government has started flagship programmes like Make in India, Digital India, Swachh Bharat Mission, Housing for All, Sagar Mala, among others and introduced reforms like Goods and Services (GST) that have the potential to generate productive employment opportunities. Pradhan Mantri Rojgar Protsahan Yojana incentivises the industry to promote job creation by reimbursing employer's contribution of 8.33 per cent EPS (Employees' Provident Fund) made to new employees, Singh said.

The government has also announced special packages for textile, leather, footwear and accessories sector where in addition to 8.33 per cent EPS, the government will also bear 3.67 per cent of EPF contribution for all new employees enrolling in EPFO for first three years of their employment. A United Nations labour report earlier this year had projected India's unemployment to increase in 2017 and 2018 because of stagnation in job creation. Unemployment in India is projected to increase from 17.7 million last year to 17.8 million in 2017 and 18 million next year, the report had said.

*FE Dated : 27-12-2017*

### **Significant percentage of employees world over disengaged: Study**

Employee engagement is a key bottom-line issue, yet over one-third of workers in 17 of the world's most important economies are disengaged, finds out a study.

According to the study, which covered 17 countries and 12,480 participants, Indian workers ranked well above global averages on all engagement metrics, scoring higher than all other countries. Moreover, Indian workers have also rated every workplace satisfaction metric significantly above global averages.

Global workplace solution provider Steelcase partnered with research firm IPSOS for the study to measure relevant dimensions of employee engagement and workplace satisfaction.

This study found that while more than one-third of workers are disengaged, another third are somewhere in the middle, not working against their companies, but not driving better business results either.

"When workers become disengaged, it costs companies

money, slows projects, drains resources and undermines company goals, as well as the efforts of their engaged counterparts. This is why employee is one of the key issues facing leading global organisations today," the study said.

The study noted that the most highly engaged employees tend to hail from emerging economies and the least engaged come from countries in well-established markets.

Analysis of the data identified a pattern that the country where employees live, its culture and the resulting expectations have an impact on how highly engaged and satisfied they are with their workplace. As for India, the study noted that 70 per cent of the country's employees occupy either a private or shared private office at work and this is an important metric for employee engagement.

"Culturally, having a workspace of one's own, even if it is compact and modest, is a signal of belonging and importance, which may explain the overall high degree of workplace satisfaction," it added.

*BL Dated : 21-12-2017*

### **Workforce grows, but job creation fails to keep pace**

About 26 million people joined the potential workforce in the year to August 2017, while only about 1.5 million people were employed on an incremental basis, according to survey data provided by BSE-CMIE.

The population in the age bracket 15 years or above (the potential workforce) was up from 942 million to 968 million, while the number of employed increased from 403 million to 405 million. BSE-CMIE conducts three surveys in a year on employment - with a sample of 1,01,724 households across 25 States.

According to BSE-CMIE, at least 16 million people are unemployed today. Many economists have said that if the pace of job creation is not accelerated, the 'demographic bonus' could become a 'demographic onus'.

About 12 million people are expected to join the Indian workforce every year till 2050, according to the 2017 UN population estimate, mandating that many jobs to be created every year.

If not for demonetisation, it is likely that the employment figures could have been higher. According to BSE-CMIE estimates, job losses due to demonetisation were about 1.5 million.

Also, to some extent, data indicate that education plays a role in widening the gap. The number of employed in the 15-24 age bracket was down by about 10 million to 44 million in the last one year. This pulled down the overall employed figures as of August 2017.

While it is likely that some of them are studying, one cannot rule out the possibility of some others preferring to be homemakers. After all, labour force participation among women, at 11 per cent (as compared to 72 per cent for men), is among the lowest in the world.

None of the 25 States in the survey managed to create more jobs than the addition to the potential workforce. Uttar Pradesh, Maharashtra, Bihar, Tamil Nadu and Andhra Pradesh were the worst in terms of potential job 'gaps'. Uttar Pradesh had a 'gap' of 4.5 million in the last year, followed by Maharashtra (3.1 million), Bihar (2.5 million), Tamil Nadu (2.3 million) and Andhra Pradesh (2 million).

Employment elasticity to output was about 0.2 during the period 1993-2012 indicating that every 10 per cent change in real GDP led to a 2 per cent change in employment. It fell from the level of 0.4 witnessed in the 1980s. Currently, sectors

such as construction (1.1), apparel (0.79), leather and leather products (0.64) have relatively higher employment elasticity as against utilities (0.04), trade and transport (0.2).

*BL Dated : 25-12-2017*

### **2017 was a terrible year for India's techies – but things may only get worse**

One of the top employment generators until a few years ago, India's \$160 billion IT industry laid off more than 56,000 employees this year. Some analysts believe this spree was worse than the one during the 2008 financial crisis. Meanwhile, hiring plummeted, with entry-level openings having more than halved in 2017, according to experts.

Tata Consultancy Services and Infosys, two of India's largest IT companies and once leaders in job creation, reduced their headcounts for the first time ever. Even mid-sized players like Tech Mahindra retrenched several employees.

### **When hell broke loose**

According to Alka Dingra, General Manager of IT staffing at TeamLease Services "Compared to the normal rate of forced attrition (that is, asking non-performers to leave) of around 1% in earlier years, 2017 saw Indian IT companies letting go of between 2% and 6% of their employees".

Infosys cut 9,000 jobs in January. Meanwhile, around 6,000 Indian employees at Cognizant reportedly lost their jobs to automation. Mumbai-headquartered Tech Mahindra implemented a cost optimisation plan of increasing automation and reducing manpower. It turned ugly in July when the firm made headlines over a controversial audio clip that featured an HR personnel purportedly coercing an employee into quitting by 10 am the next day, or risk being fired.

Moreover, it wasn't just about those at the bottom of the IT pyramid. Pink slips were doled out to even senior employees with outdated skills.

### **Slamming the brakes on hiring**

On the hiring front, too, bad news abounded. In 2017, campus hiring by IT companies fell by a massive 50%-70%. This was mainly because companies changed their hiring practice: while earlier they'd hire freshers in bulk in anticipation of future contracts, the strategy has now shifted to just-in-time contract hiring.

With revenue growth under stress, companies did not want to hold a bench – an employee pool on a company's payroll, awaiting projects.

For several years now, Indian IT firms have anyway been moving away from labour-intensive projects towards more remote and technology-based solutions such as video conferencing, cloud computing, and artificial intelligence. This has resulted in hundreds of entry-level roles like data entry and server maintenance becoming obsolete.

In the long run, automation may increase the number of jobs available for workers with niche skill sets. But lower-level workers will continue to suffer. Nearly one-third (700,000) of the low-skilled workers in India's IT sector stand to lose their jobs by 2022, a recent report by market analysis firm HfS Research says. Less than 5% of Indian techies are equipped to handle high-skilled jobs.

This dearth of trained talent is especially worrying as, within the next few years, roughly 40% of the less sophisticated tech jobs will be replaced by high-paying ones like data

scientist and data analyst, estimates Kris Lakshmikanth, founder of recruitment firm Head Hunters India.

**Side effects of “America First”**

Donald Trump’s arrival at the White House earlier this year hasn’t helped. Since Trump took office, the fate of the H-1B, a six-year temporary work visa that Indian IT companies heavily depend on, has been hanging fire.

In March 2017, the US government stalled the premium processing of this visa category.

The criteria for computer programmers to apply for the H-1B visa became tougher. In April, Trump signed the “Buy American, Hire American” executive order, promising to bring jobs back to the country, putting migrant workers in jeopardy. In November, the judicial committee of the US House of Representatives gave its nod to the Protect and Grow American Jobs Act (titled HR 170), which classifies any company that has more 15% of its workforce working on-site as “visa-dependent.” With this, the pressure is mounting on Indian outsourcing giants which sometimes have over 50% of their manpower working on-site.

Even the current workers have cause for concern – to clamp down on visa fraud, the United States Customs and Immigration Services plans to double the number of visits to workplaces. “Indian IT companies, thus far champions of IT-based outsourcing, have been forced to go back to the drawing board in order to reposition themselves higher up in the value chain,” According to Anshul Prakash, a partner at Mumbai legal services firm Khaitan & Co,

*Scroll.in Dated : 28-12-2017*

**Select Case Laws  
2017 III CLR 840  
In the Supreme Court of India  
September 21, 2017  
CIVIL APPELATE JURISDICTION OF  
CIVIL APPEAL NO. 2009  
PRESENT**

**The Honorable Mr. Justice Arun Mishra  
The Honourable Mr. Justice Mohan M. Shantanagoudar  
Employees’ State Insurance Corporation & Anr.  
Appellants**

**v.**

**Mangalam Publications (I) Private Limited Respondent**

Employees’ State Insurance Act, 1948 – Ss(22), 75 82 – Interim relief, wages- Whether the interim relief paid by the respondent to its employees, during the period from 1.4.1996 to 31.3.2000, is to be treated as ‘wages’ as defined u/s 2(22) of the ESI Act and the respondent is liable to pay ESI Contributions on the same? The Apex Court answered this question in the affirmative, with these conclusions: (i) The amount paid by the respondent as interim relief, to its employees, falls within the definition of “Wages” u/s. 2(22) of the ESI Act and the respondent is liable to pay ESI Contributions on the said payments. (ii) The High Court Ignored to appreciate that the effect of the ESI Act, Cannot be circumvented by the department office memorandum. Impugned Judgment of High Court is set aside.

*(Paras 1 to 12), Civil Appeal allowed.*

**2017 III CLR 867  
In The High Court of Hyderabad  
(FOR THE STATE OF TELANGANA AND THE STATE OF  
ANDHRA PRADESH)**

**January 30, 2017  
WRIT PETITION NO. OF 2006  
PRESENT**

**The Honorable Mr., Justice M. Seetharama Murti  
Chief General Manager, O. & E., Hindustan Petroleum  
Corporation Ltd.,**

**R.R. Dist & Anr. Petitioners**

**v.**

**C. Shankar Respondent**

Industrial Disputes Act, 1947 \_ S.10 (1) \_ Disciplinary inquiry, unauthorized absence from duty- Discharge from service - Challenge is from the petitioner management to the award passed by Industrial Tribunal, modifying and reducing the punishment to the award passed by Industrial tribunal, modifying and reducing the punishment of dismissal from service of respondent- workmen to that of his compulsory retirement from service. The Court held that (i) while modifying the punishment Awarded to the respondent- workman, the Tribunal has given no reasons much less valid reasons to come to said conclusion, though it was a case of repeatedly remaining absent from duties for pretty long periods by the respondents.(ii) The impugned order shows that the Tribunal did not examine various aspects of the measure and nature of penalty, which was indeed properly considered by the disciplinary authority, as well as appellate authority in this case. (iii) The penalty of discharge imposed by the disciplinary authority and appellate authority admittedly is not going to affect any monetary benefits to which workman is entitled to on such discharge. (iv) As such there was no necessity for the Tribunal to interfere with the punishment and modify it to one of compulsory retirement, which is not even prescribed as one of the penalties in the standing Orders of the management. (v) As such the impugned order brooks interference by this Writ Court. The punishment imposed by the disciplinary authority and confirmed by the appellate authority is restored.

*(Paras 1 to 7), Writ Petition allowed.*

**In The High Court of Gujarat  
February 21, 2017  
SPECIAL CIVIL APPLICATION NO. 10414 OF 2007  
PRESENT**

**The Honourable Ms. Justice Sonia Gokani  
Harshaben Dalpatsinh Rajput Petitioner**

**v.**

**President, Nashabandhi Mandal Respondent**

Industrial Disputes Act, 1947 – Ss. 10 (1), 25-F, 2 (oo) (bb) – Termination of service, not a retrenchment – Whether the termination of service of the petitioner by the respondent-authority was her illegal retrenchment from service? In view of the law settled by the Supreme Court the Court answered this question against the petitioner with these conclusions: (i) In view of resignation from service of counselor by the petitioner, her appointment as an ‘Administrator’ with effect from 1.11.1995, cannot be held to be continues service , with the respondent management (ii) The Tribunal after detailed discussion, rightly concluded that termination i.e. not granting her further extension in service , would not amount to retrenchment as contemplating u/s.2(oo) (bb) of the I.D. Act. (iii) In View of her unsatisfactory performance, as could be noted from extended and it would not amount to retrenchment. The order passed by the Labour Court was lawful and valid, and it did not call for interference by this Court.

*(Paras 1 to 11), Petition dismissed.*