

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination April- May 2024
Semester: 8

Labour Law -2

(MARKS: 100)

TIME : 3 hours

Instructions:

1. Answer five questions
2. Question No. 6 is to be compulsorily attempted.
3. Read the questions carefully and answer accordingly.

Q.1) "Pay equity and wage discrimination are increasingly being used by proponents of fair wage structures because they are more exact than the term 'comparable worth'. Pay equity and wage discrimination are coming to be seen as opposite sides of the same coin. Pay equity is the objective and wage discrimination, in whatever form, is what must be identified and rooted out;

'Comparable worth' may be useful as shorthand to describe the affirmative action policy or standard which an employer striving for pay equity may adopt". Critically Analyse the statement. (Marks: 20)

Q.2) The petitioner was appointed as a sweeper in Marwar Super Speciality Hospital Society (an autonomous institute under Government of Rajasthan) on 6 th June 2020. Her appointment was purely temporary and as per the contract signed such an appointment was initially to be for a period of one year, which is extendable on an yearly basis for a period of 3 years. The services of the petitioner were extended for one year from 12.6.2021 till 11.6.2022, and finally for the period 12.06.2022 to 11.06.2023 . On 18.5.2023 , the petitioner applied for earned leave on medical grounds as she was not able to attend duties from 15.5.2023 to 31.5.2023 on account of her being pregnant. On 24.5.2023, the petitioner applied for maternity leave starting from 1.6.2023. On 9.6.2023 , the respondents communicated to the petitioner that as per the terms and conditions of the offer of appointment, her contract would end on 11.6.2023, which could not be extended beyond the period of three years. Thus, she was entitled to maternity leave only up to 11.6.2023. The petitioner, however, contested the said position and claimed that she was entitled to maternity benefits. Once again the respondents made it clear to the petitioner that she would be entitled to maternity leave for a period of 1.6.2023 to 11.6.2023, and not thereafter. It was also made clear that no further extension shall be allowed nor permissible. She has approached the Hon'ble High Court of Rajasthan in this regard. Decide after giving arguments from both sides.

(Marks: 20)

Q.3) Critically Examine in detail the case of The Officer in Charge, Sub Regional Provident Fund Office, vs. M/s Godavari Garments Ltd. AIR 2019 SC 3528.

(Marks: 20)

Q.4).“ The Unorganised Workers’ Social Security Act 2008 was a welcoming initiative to bring neglected unorganised workers into the mainstream of Indian economy by providing them social security benefits. Yet it is too loose to serve any benefits to the target population and too weak to not to be manipulated by Centre and State Governments trying to avoid their responsibilities. In effect, it makes none of the promises to the beneficiaries that it has claimed.”; Critically Analyse

(Marks: 20)

Q.5) Electrical Agencies is a partnership concern carrying on business in electronic goods. Mr Sharma was employed for carrying out repairs of television sets on a monthly salary of Rs. 5,000. On 17 July, 2007, while carrying out repairs of a television set, a component of the set burst resulting into injury to the face of Mr Sharma and he lost his vision of the left eye. He, at the time of the incident, was 27 years old. The establishment of the appellant is covered by the provisions of the Employees’ State Insurance Act, 1948. Mr Sharma, who is an insured person, approached the Corporation for receipt of benefits on account of injury suffered on 17 July, 2007. The Corporation granted the benefit as claimed by Mr Sharma and was paid a sum of Rs. 2089 per month. Second Schedule to the Act sets out description of various kinds of injuries and the percentages of loss or of incapacity. Item (31) in the Second Schedule refers to loss of one eye, without complications, the other being normal, and the percentage of loss of earning capacity is prescribed at 40 per cent. On 4 September, 2011, Mr Sharma served notice upon the appellant claiming that the injury was caused during the course of employment and he is entitled to claim compensation for the loss of vision of one eye. Mr Sharma demanded a sum of Rs. 7 lakhs and threatened to adopt appropriate proceedings in case the amount so demanded was not paid within seven days of the receipt of the notice. The notice was followed by Application No. 108/C-18 of 2012 before the Workmen' Compensation Commissioner at Mumbai. The application was filed in accordance with provisions of S. 22(2) of the Workmen's Compensation Act, 1923 and the sum demanded was Rs. 1,06,785 with penalty, penal interest and costs. On 27 November, 2012, company appeared before the Commissioner and filed an application, *inter alia*, claiming that the application filed by Mr Sharma was not maintainable in view of provisions of S. 53 of the Employee State Insurance Act. This objection was overruled by Commissioner for Workmen's Compensation. The Company, Electrical Agencies approached High Court of Bombay under Article 226 of the Indian Constitution which was summarily dismissed by observing that there is an alternate remedy by way of first appeal as provided under S. 30 of the Workmen's Compensation Act. Against which this appeal is preferred. Decide

(Marks: 20)

Q.6). SAIL is a Government of India Undertaking and is a State within the meaning of Article 12 of the Constitution of India having its steel plants in different parts of India and is a registered establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970 (CLRA) and the contractor through whom the service of the contract labour was engaged was holding its licence as envisaged under Section 12 of the CLRA Act. The tripartite memorandum of settlement dated 12th November, 1991 which became effective from 1st April, 1991, was signed by the appellant, contractor and the respondent through Union before the Assistant Labour Commissioner (Central), Jabalpur. Under the said settlement, it was agreed that the contract labour would be paid Rs. 11.65/ per day over and

above the minimum wages notified by the appropriate Government under the Minimum Wages Act, 1948. Undisputedly, each of the member was paid his wages in terms of the memorandum of settlement dated 12th November, 1991. At the later stage, the appropriate Government issued a prohibition notification of employment of contract labour dated 17th March, 1993 and the fact remains that the contract labour which was engaged prior to the prohibition notification was allowed to continue in the establishment of the appellant (SAIL) on the same terms and conditions with no change in their service conditions under the agreement which was executed prior to the prohibition notification dated 17th March, 1993. This was extended from time to time by the competent authority. After discontinuance of the service of the contract labour by the respective contractor in April, 1996, 2040 employees/contract labour through their union filed their respective applications in the year 1998 under Section 20(1) of the Minimum Wages Act, 1948 before the prescribed authority to claim parity with the wages payable to the employees who were direct/regular employees of the establishment of SAIL under the Minimum Wages Act. They also filed writ petitions to claim regularisation of service and backwages in view of the law laid down by three Judge Bench of this Court in Air India Statutory Corporation and Others case) But the theory of automatic absorption of contract labour by the principal employer in the establishment on issuance of a notification by the appropriate Government under Section 10(1) of the Act was later overruled by the Constitution Bench of this Court in Steel Authority of India Ltd. and Others. It is necessary to point out that Ministry of Labour, Government of India vide its notification dated 12th July, 1994, while revising minimum rate of wages payable to the employees employed in the mines had also specifically mentioned in clause 5 to the explanation that in case the existing rate of wages of any employee as per the agreement are higher than the minimum rates, the higher rates shall be protected and treated as minimum rates of wages. The claim of the respondents in their application filed under Section 20(1) of the Minimum Wages Act, 1948 was that as they had discharged the same or similar nature of work as that of direct employee of the establishment, it makes them entitled for the wages which are payable to an employee who is directly/regularly appointed in the establishment to whom wages are paid. This writ petition is brought before the High Court of Madhya Pradesh once they have been allowed to work after the prohibition notification dated 17th March, 1993 has come into force, pursuant to which their status as contract labour in the establishment ceased to operate as a result of contract of principal employer with the contractor in regard to the contract labour having been statutorily extinguished, their relationship stood automatically converted into the employer (i.e., SAIL in the instant case) and the employee (i.e. contract labour) making them entitled for wages per the memorandum of agreement which is payable to direct/regular employees of SAIL. Decide'

(Marks: 20)