

INFOLEX
CONSULTANTS

LEGAL INSIGHTS:
LABOR & EMPLOYMENT

RECENT IMPORTANT LEGAL DEVELOPMENT

1. DISCIPLINARY PROCEEDINGS INITIATED DURING SERVICE CAN BE CONTINUED AFTER RETIREMENT, IF RULES PERMIT.

In the case titled as '*Virender Pal Singh v. Punjab & Sind Bank & Ors.*' [Civil Appeal No. 3571 / 2026] [2026 INSC 226] [2026 LiveLaw (SC) 268], it was held by the Hon'ble Supreme Court of India, as:

36. On a survey of the decisions cited and discussed above, in our view, what is settled is that if the extant service Rules/Regulations permit continuance of the disciplinary proceedings, initiated against an officer/ employee before he had attained the age of superannuation, those can be continued and brought to its logical conclusion even after he had attained the age of superannuation. And where, pursuant to such proceedings, the ultimate penalty imposed is of dismissal, there may be no technical difficulty in its implementation as it may result in forfeiture of pension and other retiral dues.

2. STATE GOVERNMENT EMPLOYEES CAN'T CLAIM DEARNESS ALLOWANCES TWICE A YEAR UNLESS RULES PERMIT.

In the case titled as '*State of West Bengal & Anr. v. Confederation of State Government Employees, West Bengal & Ors.*' [2026 INSC 123] [2026 LiveLaw (SC) 120], it was held by the Hon'ble Supreme Court of India, as:

58. In view of the discussion aforesaid and taking a cumulative view of all the factors discussed in this judgment, we are of the considered view that appellant - State's contention as to delay and latches must be rejected. This is more so for the reason that when the law was set in motion the continuing non-payment of appropriate rates of DA gave the respondent employees sufficient cause of action and if recourse to law has been taken while the cause of action subsists, there is obviously no question of dismissal of the same on delay.

3. INDUSTRIAL COURT PROPER FORUM TO DECIDE ISSUES REGARDING CONTRACT LABOR.

In the case titled as '*M/s Premium Transmission Private Limited & Anr. v. The State of Maharashtra & Ors.*' [2026 INSC 87] [2026 LiveLaw (SC) 86], it was held by the Hon'ble Supreme Court of India, as:

28. [...] By applying the principle laid down by the constitution bench, the proper forum is the Industrial Court/Court for adjudicating issues concerning the employment and termination of employment of contract labour. In the backdrop of well-settled principles of law, a workman working under a contract has to determine their remedies on discontinuation or termination before the Industrial Court.

4. EX-CONTRACT WORKER MUST GET PREFERENCE WHEN PRINCIPAL EMPLOYER REPLACES CONTRACT LABOR WITH REGULAR WORKMEN.

In the case titled as '*M/s Premium Transmission Private Limited v. Kishan Subhash Rathore & Ors.*' [SLP

(C) 12192 / 2023] [2026 LiveLaw (SC) 87], it was held by the Hon'ble Supreme Court of India, as:

10.3.1 If the principal employer intends to employ regular workmen for the work previously done by contract labour, they must give preference to the erstwhile contract labourers.

10.3.2 The principal employer cannot simply hire fresh candidates from the open market while ignoring the displaced contract workers. They are legally bound to consider the contract workers who were working in that establishment.

10.3.3 To ensure this "preference" is meaningful, the principal employer may relax maximum age limit and academic qualifications; specifically, nontechnical posts to accommodate experienced workers.

5. BUILDING & CONSTRUCTION WORKERS' CESS CAN'T BE COLLECTED FROM DEVELOPERS IF WELFARE BOARD NOT ESTABLISHED.

In the case titled as '*Prakash Atlanta v. National Highway Authority of India & Ors.*' [Civil Appeal No. 4513 / 2025]

[2026 LiveLaw (SC) 71], it was held by the Hon'ble Supreme Court of India, as:

59. (iii) The Cess Act is complementary to the BOCW Act and was enacted for augmenting the resources of the Welfare Boards, constituted under Section 18 of the BOCW Act. Therefore, in the absence of such Welfare Boards, levy and collection of cess under the Cess Act did not arise, given the scheme and structure of the two Acts and the Rules.

6. WAITLISTED CANDIDATES' RIGHTS EXTINGUISH WHEN ALL SELECTED CANDIDATE JOIN POST.

In the case titled as '*The Union of India & Ors. v. Subit Kumar Das*' [SLP (C) 57192 / 2024] [2025 LiveLaw (SC) 1010], it was held by the Hon'ble Supreme Court of India, as:

12. While considering the entitlement of the respondent to any relief on the basis of his placement in the Reserved Panel, it would be necessary to bear in mind the settled position that mere placement in the wait list does not create any vested right for being so appointed. The right to be considered for appointment would spring only in the contingency of a selected

candidate not joining on his post. The wait list operates for a limited period. It cannot extend for an indefinite period and in any event after a fresh process of recruitment has commenced. This legal position is well settled and reference can be made to the decision of a three Judge Bench in Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat and others [1994 INSC 199] .

12. [...] From the aforesaid, it is clear that any right that the respondent could claim as a waitlisted candidate extinguished when all the selected candidates joined on their respective posts.

7. GOVERNMENTS MUST NOT EXTRACT REGULAR WORK FROM AD HOC WORKERS, MUST CREATE SANCTIONED POSTS FOR RECURRING JOBS.

In the case titled as '*Dharam Singh & Ors. v. State of Uttar Pradesh & Anr.*' [Civil Appeal No. 8558 / 2018] [2025 LiveLaw (SC) 818], it was held by the Hon'ble Supreme Court of India, as:

20. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on

a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers.

The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India.

8. EMPLOYER HAS DUTY TO REASONABLY ACCOMMODATE EMPLOYEE WHO ACQUIRES DISABILITY DURING SERVICES.

In the case titled as ‘**Ch. Joseph v. The Telangana State Road Transport Corporation & Ors.**’ [SLP (C) No. 36278 / 2017] [2025 LiveLaw (SC) 763], it was held by the Hon’ble Supreme Court of India, as:

13. The primary legal flaw in this approach lies in the assumption that medical unfitness for a particular post automatically entails incapacity for public service altogether. Colour blindness, though a disqualification for driving, does not render the Appellant unfit to serve in any other non-driving role. There is no evidence that he was declared wholly incapacitated or incapable of performing other duties. This Court in *Kunal Singh v. Union of India and Another* [(2003) 4 SCC 524] (*supra*), held that when an employee acquires a disability in the course of service, the employer must retain the employee by providing suitable alternate employment, unless no such post exists. In the present case, the Appellant had requested reassignment to the post of *Shramik*, which, by its nature, does not demand normal colour vision. No effort was made by the Corporation to assess his suitability or to examine the availability of such posts.

9. RESERVATION NOTIFIED IN ADVERTISEMENT CANNOT BE CANCELLED BY SUBSEQUENT ROSTER CHANGE.

In the case titled as ‘**Prabhjot Kaur v. State of Punjab & Ors.**’ [2025 LiveLaw

(SC) 425], it was held by the Hon'ble Supreme Court of India, as:

21. [...] We are in agreement with the findings of the learned Single Judge for the reason that once an eligibility criteria was declared by means of a fresh Advertisement i.e. Advertisement No. 14 dated 11.12.2020, the same cannot be changed midway through the recruitment process, as the same would tantamount to 'changing the rules of the game, after the game is played' as held by this Court in K. Manjusree v. State of A.P., (2008) 3 SCC 512.

24. The crucial date in the present case is the advertisement dated 11.12.2020. This advertisement follows the 2020 Rules where 33% of reservation was to be made for women on every government post. Thus, DSP SC Sports was reserved for women. This was mentioned in the advertisement dated 11.12.2020. This advertisement or the 2020 Rules were never challenged. The respondents now cannot cry foul referring to an event post 11.12.2020 where the so called roster system came into existence. We have not even considered the need to examine the legality of this roster in principle. Sufficient will it be for our purpose to hold that post 11.12.2020 no change could have been made.

10. EXCESS PAYMENTS TO EMPLOYEES CAN'T BE RECOVERED WHEN THERE WAS NO FRAUD OR MISREPRESENTATION.

In the case titled as '**Jogeswar Sahoo v. The District Judge, Cuttack & Ors.**' [2025 LiveLaw (SC) 396], it was held by the Hon'ble Supreme Court of India, as:

8. The law in this regard has been settled by this Court in catena of judgments rendered time and again; Sahib Ram vs. State of Haryana [(1995) Supp (1) SCC 18] , Shyam Babu Verma vs. Union of India [(1994) 2 SCC 521] , Union of India vs. M. Bhaskar [(1996) 4 SCC 416] and V. Gangaram vs. Regional Jt. Director [(1997) 6 SCC 139] and in a recent decision in the matter of Thomas Daniel vs. State of Kerala & Ors. [(2022) SCC online SC 536] .

9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to

be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

11. LOSS OF CONFIDENCE' IN TERMINATED WORKMEN MUST BE BASED ON OBJECTIVE CONSIDERATION OF FACTS.

In the case titled as '*Rudresha v. The Management, TVS Motor Company.*' [Writ Petition No. 22668 / 2014] [2023 LiveLaw (Kar) 160], it was held by the Hon'ble High Court of Karnataka, at Bengaluru as:

14.1.It is based on the decision of the Hon'ble Apex Court in the case of L. Michael & Anr. v. Johnson Pumps Limited' [AIR (1975) SC 661] matter that Sri.K.Kasturi, learned Senior Counsel for the employer has contended that once there is a loss of confidence by the employer with the conduct of the workman, the workman ought not to be reinstated.

14.3.In my considered opinion the contention of the employer that it has lost confidence is required to be examined. Though the loss of confidence is a subjective feeling and an individual reaction as held by the Hon'ble Apex Court, it is only when objective set of facts and motivations give raise to loss of confidence, that the same would have to be considered by the Labour Court.

14.4.The Hon'ble Apex Court has held that in a reasonable case of a confidential and responsible post being misused or a sensitive or strategic position being abused, once suspension has commenced, termination could be effected.

12. 'LOSS OF CONFIDENCE' MUST BE BASED ON OBJECTIVE CRITERIA AND PROVEN FACTS.

It was held by the Hon'ble Supreme Court of India in the case titled as "*Indian Airlines Limited & Ors. v. Prabha D. Kanan*" [2006 INSC 819] as follows:

"27. In Kanhaiyalal Agrawal & Ors v. Factory Manager, Gwalior Sugar Company Ltd. [MANU/SC/0559/2001] : [(2001) II LLJ 1239 SC], whereupon Mr.

Lalit placed strong reliance, this Court upheld the findings of the Industrial Court as also the High Court that the principles for invoking loss of confidence in the employee based on objective criteria, viz., (i) that the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment; stood satisfied.

28. True, loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved. But, then all the criteria mentioned therein are present in the instant case."

13. TERMINATION ON 'LOSS OF CONFIDENCE' MUST BE BONA FIDE, REASONABLE AND BASED ON TANGIBLE GROUNDS.

It was held by the Hon'ble Supreme Court of India in the case titled as "**Delhi**

Transport Corporation vs. D.T.C. Mazdoor Congress & Ors." [(04.09.1990 – SC) : MANU/SC/0031/1991], as follows:

"192. An employer who believes and suspects that his employee particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim or fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly and with due care and prudence. If the exercise of such power is challenged on the ground of being colorable or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the ground of his impugned action so that the same may be tested judicially."

14. PRIMARY NATURE OF WORK DETERMINES 'WORKMEN' STATUS, NOT INCIDENTAL CLERICAL FUNCTIONS.

It was held by the Hon'ble High Court of Delhi in the case of “**Jugal Kishore Mittal vs. Management of Sasta Sahitya Mandal & Anr.**” [1986 SCC OnLine Del 403] [(1986) 52 FLR 564 (Del)], as follows:

“[...] the present case is similar to the case of May Baker India Limited v. Their Workmen [1961 (2) FLR 594]. There it was held that if the nature of the duties is manual or clerical then the person must be held to be a workmen. On the other hand, if the manual or clerical work is

only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. In that case a person had been employed by a pharmaceutical concern as a representative for canvassing orders and it was found that the work consisted mainly of canvassing and the clerical or manual work that he did was only incidental to his main work. It was held by the Supreme Court that he would not be regarded as a workmen. [...]”

KEY CONNECT



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