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UPES

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Term Examination – May, 2018

Program/course: B.A.LL.B./B.B.A.LL.B./B.Com. LL.B. **Semester – VIII**
Subject: Labour Law II **Max. Marks : 100**
Code : LLBL 252 **Duration : 3 Hrs**
No. of page/s: 5

Section A (10 Marks)

(Attempt any two questions. Each questions carry equal marks)
General Question- subject matter

Write short notes on **any two**:

Q. No.1. Recovery of Bonus

Q. No.2. Employment Injury under ESI Act

Q. No.3. Gratuity under Payment of Gratuity Act, 1972

Q.No.4. Occupier under Factories Act, 1948

Section B (20 marks)- Conceptual Question

(Attempt all questions. Each questions carry equal marks)

Q. N0.5. Discuss the application and various benefits available to the women employees under the Maternity Benefit Act, with special reference to latest amendment. Answer with help of relevant case-laws.

Q. No.6. Discuss the application of and exemption and contribution under the EPF & MP Act, 1951. Refer to leading case-laws.

Section C (20 marks)- Analytical question

(Attempt all questions. Each questions carry equal marks)

Q. N0.7. “Labour markets are being subject to changes intended to enhance flexibility and lower labour costs. Social security measures are perceived as inimical to competitive advantage and growth. That the inevitable result of all this has been widening gaps in income and well-being is now accepted by many with greater equanimity than before”. Analyze the above proposition, based on labour reforms in our country.

Q. N0. 8. “From reports and studies it is understood that majority of migrant labourers are engaged in building construction, agriculture, brick kilns, stone quarries, carpet weaving, street vendors, waiters in hotels etc. In recent years huge unplanned squatter settlements of ISM workers are seen in the areas were construction works are prominent. Poverty and weak economic background force ISM labourers to live in rented shabby dwellings or tents with poor infrastructure with no access to water & sanitation facilities in the destination place.” Based on the excerpt from a study on issues of inter - state migrant labourers in India, discuss the relevance of Inter-State Migrant Workmen (Regulation of Employment & Condition of Service) Act, 1979.

Section D (50 marks)

(Attempt all questions. All questions carry equal marks)
- Application Based Question

Q. N0.9. The case of the respondents, who were the claimants, is that the husband of the first respondent and the father of the respondents 2 and 3. D.Chandran was working with the appellant Management as a causal labourer engaged in spraying of pesticides in the plantation. It appears that on 17.4.2014, the said D.Chandran had finished his work at 3.00 p.m. and left for his house and at 9.30 pm he complained chest pain, he was taken to the Government Hospital at Valparai, where it was declared that he was brought dead. Therefore, according to the claimants, the death occurred due to the stress and strain suffered by the deceased Chandran in the course of his employment.

The said claim was resisted by the appellant-Management, contending that the deceased Chandran has completed his work at about 3.00pm and left for his residence and around 9.30pm, when it was informed that D.Chandran has got chest pain, he was immediately taken to the Government Hospital at Valparai, where he was declared dead. According to the appellant-Management, the death did not occur in the course of the employment and therefore, the appellant-Management is not liable to pay the compensation. It is further contended that even assuming that the appellant-Management is liable to pay the

compensation, there is a valid Insurance policy covering the risk and it is only the 4th respondent Insurance Company, which has to pay the compensation.

Before the Deputy Commissioner, the first claimant, namely the wife of the deceased Chandran was examined as PW1 and Exs.P1 to Ex.P5 were marked. On the side of the appellant-Management, one Papu, an employee of the Management was examined and R.Nithyanandan was examined on the side of the 4th respondent-Insurance company. The Tribunal allowed the claim on the basis of the available materials and held that the appellant-Management is liable to pay compensation. The quantum of compensation was determined at Rs.4,23,651/- and it was apportioned between the appellant-Management and the Insurance company. The liability of the Insurance company was fixed at Rs.85,217/- and the balance amount Rs.3,38,434/- was directed to be paid by the appellant management. Aggrieved by the same, the appellant-Management is on appeal before this Court. Decide on behalf of this appellate court with help of legal provisions and relevant case-laws.

Q. N0.10. Discuss constitutional validity of Payment of Bonus Act, 1965 in the light of Jalan Trading Co. V Mill Mazdoor Sabha.

Q.N0.11. The appellant, Indian Construction Ltd., is a Government company under the Companies Act, 2013. It is engaged in the work of construction of various types in India and abroad. At all times material to this appeal, the appellant had undertaken to carry out civil engineering work for the 5th respondent, Tata Steel Plant under various contracts. The appellant had registered itself as an employer under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970, Respondent No. 4 M/s. Investigation and Security Services India Pvt. Ltd., is a Private Limited Company Which carries on the business of providing security services through contract labour for various companies and individuals. It maintains officers and workmen to render security services to various establishments and individuals. Respondent No. 4, at all material times, possessed a license as a contractor under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970, read with Telangana Contract Labour {Regulation and Abolition) Roles, 2014. On or about 11th December, 2014, the appellant entered into an agreement with Respondent No. 4 by which respondent No, 4 agreed to supply to the appellant, (i) Security Guards (ii) Shift in-charge and, (iii) Security Sergeants on the terms and conditions specified in that agreement. The agreement .specifies that the appellant would pay to Respondent No, 4 monthly Amounts at the rate of Rs.4000, Rs. 5000 and Rs. 6000 as remuneration for the supply of Security Guards, Shift in-charge and Security Sergeants respectively. The appellant has accordingly paid to Respondent No. 4 the said amounts by way of monthly remuneration for each of the categories of workmen supplied by the 4th Respondent, Respondent No. 4, however, is turn, paid to the Security Guards Rs. 3200 instead of Rs,

4000; to the shift in-charge Rs. 3600 instead of Rs. 5000; and to the Security Sergeants Rs. 4000 instead of Rs. 6000 thus retaining Rs. 800 in respect of Security Guards, Rs, 1400 in respect of Shift in-charge or Head Guards and Rs. 2000 in respect of Security Sergeants.
The Assistant Commissioner of Labour connected with the enforcement of provisions of the said Act visited the site of the appellant where the contract labour supplied by the 4th respondent was employed. He found that there was a difference between the wages paid by the appellant to its own watch and ward staff and the contract labour supplied by the 4th respondent who were doing similar work. He reported that working conditions of both types of employees should be same if work being done is same/similar. Regarding this, on 19th of January, 2015, he filed a complaint before the Commissioner of Labour, Under the proviso-to Rule 25(v) (a) of the Telangana Contract Labour (Regulation and Abolition) Rules, 2014, in the case of any disagreement with regard to the type of work, the same is required to be decided by the Commissioner of Labour, Telangana whose decision shall be final. Decide on behalf of the Commissioner.

Q. No. 12 The respondent company Informatics was formed in the year 1982 with the object of rendering computer services to its customers relating to collection and maintenance of information and to develop company software application to suit the special requirements of the customers; that in March 1983, the company set up a data processing division which undertook data processing services such as preparation of pay rolls, financial accounting and inventory control related statements; that subsequently there was a decline in the demand for the services of the data processing division of the second respondent on account of availability of indigenously manufactured computer and in the year 1989, the division became non-viable and, therefore, the respondent was forced to close down the same. As on 4.1.1989, 46 persons were employed in the data processing division and they were informed of the decision to close down the unit. On 30.1.1989, a notice under Section 25 FFA of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act') was sent to the State Government intimating the Government that the data processing operations would be closed down with effect from 3.4.1989. The services of the workmen in the data processing division were terminated on account of closure of the unit and by October, 1989, the software division of the respondent also was closed and the services of 71 workmen had been terminated after paying the closure compensation in terms of the provisions of the ID Act.

Disputes were raised which were referred to the Labour Court on the question whether the closure of the data processing division rendering the appellants unemployed is justified or not. Before the Labour Court, three issues were raised, viz.

(i) whether the respondent establishment is a factory;

(ii) whether on the date of closure of the establishment, the respondent was employing more than 100 workmen requiring protection from the specified authority for closure of the establishment; and

(iii) to what relief the workmen are entitled Before the Labour Court, it was contended on behalf of the respondent that it manufactures software and thereafter sells the same and, therefore, it is not an establishment as defined under Section 25L of the ID Act much less a factory as defined under Section 2(m) of the Factories Act, 1948 (hereinafter referred to as 'the Act') and, thus the dispute referred to the Labour Court cannot be an industrial dispute in terms of Section 2(a) of the ID Act. The Labour Court overruled the objections raised by the second respondent and held that the ID Act covers the establishment of the second respondent and directed reinstatement of the workmen with back wages. The Labour Court also rejected the argument that the respondent is not a factory; that the respondent employed more than 100 persons at the time of the services of the workmen were terminated and was, therefore, required to comply with the provisions of Chapter V-B of the ID Act inasmuch as prior permission of the State Government had not been obtained as required under Section 25-O of the ID Act; that the closure was unjustified; that the establishment of the first respondent and the second respondent are inter-connected as they belong to the same group of companies.

A writ petition filed against the award made by the Labour Court is allowed by a learned Single Judge setting aside the award made by the Labour Court. In second appeal also the decision was made in favour of the respondent company, now it is before the Supreme Court of India by special leave; decide as per the provisions and the case-laws under the Factories Act.

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Section A (10 Marks)

(Attempt any two questions. Each questions carry equal marks)
General Question- subject matter

Write short notes on **any two**:

Q. No.1. Workman under the Factories Act

Q. No.2. Labour Code on Industrial Relations

Q. No.3. Gratuity

Q.No.4. Contract Labour System

Section B (20 marks)- Conceptual Question

(Attempt all questions. Each questions carry equal marks)

Q. N0.5. Discuss the benefits available under the ESI Act.

Q. No.6. Identify and discuss the provisions of the Interstate Migrant Workmen Act which provided for special measures in favour of these workmen over and above provisions under the Contract Labour Act.

Section C (20 marks)- Analytical question

(Attempt all questions. Each questions carry equal marks)

Q. N0.7. Ms. Shikha Banerjee is 3 months pregnant and is working in a leading cloth manufacturing unit in Mumbai which requires long standing hours during work. She is finding it difficult to work in the organization due to her pregnancy. Mr. Rohit Saxena who is her employer has even dismissed the application for maternity leave. As a lawyer, give legal advice to Ms. Shikha discussing her rights under any Act, if present.

Q. N0.8. Discuss the concept of employment injury under the Employees Compensation Act, especially the notional extension of premises of work with respect to injury caused by accident "arising out of and in the course of employment" with help of case-laws.

Section D (50 marks)

(Attempt all questions. All questions carry equal marks)
- Application Based Question

Q. N0.9. Define and explain the concept of 'Worker' under the Factories Act with help of case-laws dealing with contract of service. How can the occupier be held liable for violation of any provisions of this Act and how can she/he escape such criminal liability under the Act?

Q. N0. 10. The constitutional validity of the Contract Labour (Regulation and Abolition) Act was challenged in a given case on the following grounds by contractors; decide for each ground with help of case-laws and objectives of the Act:

- The application of the Act is in respect of pending work of construction amounts to unreasonable restriction on the right of the contractors violating Article 19(1)(g) of the Constitution.
- The fees prescribed for registration, licences, or renewal of licences amount to a tax and are, therefore, beyond the rule-making powers of the Central and State Government.
- The provisions of the Act are unconstitutional and unreasonable because of impracticability of implementation. Provisions in regard to canteens, rest rooms, latrines and urinals as contemplated in sections 16 and 17 of the Act read with Central Rules 40 to 56 and Rule 25 (2) (vi) are said to be incapable of implementation and also to be enormously expensive as to amount to unreasonable restrictions under Article 19 (1) (g).

Q. N0. 11. The appellant was employed by Respondent SICA for repairing ACs. On July 17, 1997 while she was repairing an AC a component of it burst and that caused an injury to his face. As a result thereof she lost vision of her right eye. The appellant being an employee and insured person under the Employment State Insurance Act, 1948 (hereinafter referred to as the `ESI Act') and as the injury sustained by her was an employment injury, became entitled to the benefit of Section 46(c) of the ESI Act. Therefore, she approached the ESI Corporation and the Corporation granted the benefit available to him under the ESI Act. Thereafter in September 1999 she served a notice on the Respondent SICA demanding Rs. 9 lakhs as compensation. This was followed by Application No. 108/C-18 of 1999 before the Commissioner for Employees' Compensation, Bombay under Section 22(2) of the Employees' Compensation Act, 1923 wherein he claimed compensation of Rs.1,06,785 with penalty, penal interest and costs. In that proceeding Respondent No.1 raised an objection regarding maintainability of the application under the Workmen's Compensation Act by filing an application Exhibit C-5. The objection was that in view of the bar created by Section 53 of the ESI Act, it was not open to the appellant to recover any compensation or damages under the Employees' Compensation Act for the said employment injury. Decide on behalf of the appellate court with help of laws and cases.

Q. No. 12. Analyse the provisions relating to exemption from the application of EPF Scheme under the EPF and MP Act, 195.
NABARD Bank (for short, respondent bank) was established in 1976. The provisions of the Employees Provident Fund Scheme, 1952 became applicable to the respondent bank from 1.9.1979. According to the respondent bank, it meticulously complied with the provisions of the Scheme till 31.8.1981. Thereafter, the respondent bank formed its own trust and framed its own Scheme for payment of provident fund to its employees. According to that Scheme of the bank the employees were getting provident fund in excess of what was envisaged under the Employees Provident Fund Scheme, 1952.

The Regional Provident Fund Commissioner vide order dated 29.8.1981 exempted the respondent bank from complying with the statutory provisions of the Scheme with effect from 1.9.1981 and permitted the respondent bank to pay provident fund to its employees according to its own Scheme. The respondent bank contributed provident fund to its employees as per its own Scheme for the period from 1.9.1981 to 31.8.1993.

On 14.10.1991, the said exemption/relaxation granted to the respondent bank was withdrawn and cancelled and the respondent bank was directed to implement the provisions of the statutory Scheme. Despite cancellation of exemption, the respondent bank continued to make payment of provident fund in accordance with the earlier Scheme till 31.8.1993. In the said Scheme, the respondent bank was contributing provident fund

for the employees in excess of the statutory obligation. According to the respondent bank, owing to huge accumulated losses, it issued a notice of change under section 9A of the Industrial Disputes Act, 1947 expressing its intention to discontinue payment of provident fund in excess of its statutory liability with effect from 1.11.1998, but would continue to contribute towards Employees Provident Fund according to the statutory liability.

The Regional Provident Fund Commissioner-II issued a letter dated 13.5.1999 informing the respondent bank that it cannot withdraw the benefit of paying matching employer's share without any limit to wage ceiling and directed it to continue extending the same benefit as was granted prior to 01.11.1998. Thereafter, the Central Government made a reference of the dispute to the Central Government Industrial Tribunal, Nagpur (for short, the Tribunal). The said Tribunal relied on Section 12 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 1952 Act) and held that the management cannot reduce, directly or indirectly, the wages of any employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension gratuity (provident fund) or life insurance to which the employee is entitled under the terms of his employment, express or implied.

The Tribunal directed that the employees of the respondent bank shall continue to draw equal amount of contribution from the bank towards provident fund without any ceiling on their wages. According to the Tribunal, the action of the respondent bank to reduce the contribution of the provident fund or to put a ceiling on the provident fund is not justified. The Tribunal also directed that the workmen shall continue to draw the benefit of the prevailing practice of contribution of Employees Provident Fund without any ceiling. The respondent bank, aggrieved by the said award passed by the Tribunal, preferred a writ petition before the learned Single Judge of the High Court of Judicature of Bombay at Nagpur Bench, Nagpur. It was submitted by the respondent bank that the impugned award as well as the communication issued by the Regional Provident Fund Commissioner-II is contrary to law as the same is based on the assumption that Section 12 of the 1952 Act creates bar for imposing the ceiling in accordance with the Provident Fund Act.

It was also submitted that the respondent bank is under an obligation to make contribution towards Employees Provident Fund in accordance with the statutory provisions of 1952 Act. It was further urged that the respondent bank all through has at least made contribution towards Employees Provident Fund in consonance with the statutory provisions. On behalf of the respondent bank it was submitted that the respondent bank has always complied with the statutory obligation. It was also contended by the respondent bank that the appellants cannot claim as a matter of right the amount in excess of the statutory provisions of 1952 Act.

In this background decide the case with help of decided case-laws.