

## Labour Problems & Their Solutions

### Courts intervention in punishment by employer.

As and when we take disciplinary action against a delinquent employee, challenges in the court. How far the courts are empowered to interfere with the punishment as imposed by an employer upon an employee.

It is for the employers to decide the quantum of punishment depending upon gravity of misconduct but at the same time such a punishment should not be disproportionate to the misconduct and should not shock the conscious of the court notwithstanding that the powers of High Court/Tribunal to interfere with the quantum of punishment imposed by the disciplinary authority or the appellate authority in extremely limited but when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the High Court can direct for reconsideration or in an appropriate case to shorten litigation can indicate the punishment to be awarded. *Kailash Nath Gupta vs. Enquiry Officer, R.K. Rai, Allahabad Bank, 2003 LLR 530 (SC).*

### Casual employees – entitled to maternity benefit.

Besides regular employees, we engage some female employees on casual basis to meet certain contingencies. We are not clear as to whether they will be entitled to maternity benefits.

Be it clarified that under the Maternity Benefit Act, an establishment employing 10 or more employees is required to extend maternity benefits to a female worker provided she has completed 80 days' service. Be it clarified that Gujarat High Court has held that in the facts of the said case, it was held by the Apex Court that the provisions of the Maternity Benefit Act, 1961 apply even to casual female workers and they are entitled to maternity benefits. Considering these facts of the present case, according to my opinion, decision of the Apex Court would squarely apply to the facts of the present case and would cover the matter at issue. I am, therefore, of the opinion that the petitioner is entitled for the maternity leave for the period from 7th September, 1999 to 28th October, 1999 and 24th November, 1999 to 24th December, 1999, in all, for 83 days with wages for the said period. *Bhartiben Babulal Joshi vs. Administrative Officer, 2004 (100) FLR 1100 : 2004 LLR 233 (Guj.HC).*

### 5 days working in a week – calculation of gratuity.

In our establishment we work 5 days a week and not 26 days in a month. What will be the position with regard to payment of gratuity? Can it be reduced?

No. It is a prerogative of the employer to work for 5 days or 6 days but the employees are not responsible for that. Hence the gratuity will be calculated as if an employee is working for 26 days in a month. Reference is made to one case, decided by Bombay High Court, wherein it has been held that the payment of gratuity to an employee working in an establishment for 22 days in a month will be calculated @ 26 days' working in a month.<sup>1</sup> The Madras High Court has also followed the ratio as laid down by the Bombay High Court.<sup>2</sup> It is immaterial whether the employees are working for 22 days or more in a month.

1. *May and Baker (I) Ltd. Bombay v. J.S. Continuo, National Union of Commercial Employees, 1991 LLR 375 (Bomb HC).*
2. *Kone Elevator India Ltd. v. Asstt. Commissioner of Labour, 2005 LLR 442 (Mad HC).*