

## CORE INTEGRA COMPLIANCE NEWSLETTER

**EDITION: FEBRUARY 2024** 







CENTRAL - EPFO - IMPLEMENTATION OF THE DIGITAL JOINT REQUEST UNDER PARA 26(6) OF THE EPF SCHEME, 1952.

The Employees' Provident Fund Organization vide Notification no. WSU/E-108547/4421 dated 30.01.2024 issued the format to prefer the Joint Request under Para 26(6) of the EPF Scheme, 1952. With a view to reduce time and paper consumption, the format enclosed with the notification shall be filed and processed in digital mode for all new cases prospectively. All the existing members who are already contributing on Pay more than the statutory limit and their employers are also paying administrative charges on such contributions made on Pay more than the statutory limit will not be required to file their Joint Requests in the enclosed format immediately.

The above measure is only for the cases under Para 26(6) of the EPF Scheme, 1952. The cases of Pension on Higher Wages under the Supreme Court judgment dated 04.11.2022 are already covered under the earlier Head Office Circular No. Pension/PoHW/23/Circular-26(6)/139610/1648 dated 14.06.2023. <u>View Notification</u>





CENTRAL - ELECTION COMMISSION OF INDIA (ECI) – TENTATIVE DATE FOR GENERAL ELECTION TO LOK SABAHA, 2024 – 16.04.2024.

The Office of the Chief Electoral Officer, Delhi vide Notification no. CEO/COE/102(05)/2023/453 dated 19.01.2024 issued a notice directing attention towards the Election Planner issued by the Election Commission of India, wherein various activities in the build up to the election has been given along with the timelines/ duration for each activity to start and to be completed. The Commission has tentatively given the Poll Day as 16.04.2024 for the purpose of reference and to calculate Start and End dates in the Election Planner.

**View Notification** 





### STATUTORY

### NOTIFICATIONS/UPDATES

CENTRAL - EPFO - REMOVAL OF AADHAAR FROM THE LIST OF

ACCEPTABLE DOCUMENTS AS A DATE OF BIRTH PROOF.

The Employees' Provident Fund Organization vide Notification No. WSU/2024/1/UIDAI Matter/4090 dated 16.01.2024 issued a notice, wherein the Aadhaar is being removed from the list of acceptable documents as a proof of date of birth as mentioned in the SOP on Joint Declaration issued vide circular no. WSU/2022/Rationalization of work areas/Joint Declaration (E-54018)/3638 dated 22.08.2023.

**View Notification** 





CENTRAL - CENTRAL GOVERNMENT - HALF DAY CLOSING (TILL 2:30 P.M.) ON 22ND JANUARY 2024.

The Ministry Personnel, Public Grievances & Pensions, Government of India vide notification dated 18.01.2024 declared half day closing (till 2:30 P.M.) on 22nd January for all Central Government Offices, Central Institutions and Central Industrial Establishments throughout India, on the occasion of the Ram Lalla Pran Pratishtha to be held at Ayodhya on the said date.

#### **View Notification**

CENTRAL - EPFO - HALF DAY CLOSING (TILL 2:30 P.M.) ON JANUARY 22, 2024.

The EPFO Head Office vide Notification No. H.R.D/1(71) 2020/Misc.-Part (1)/947 dated 18.01.2024 declared half day closing till 2:30 P.M. on 22nd January 2024 for all its offices across the country for the Ram Mandir Inauguration to be held at Ayodhya in consonance with the notice issued by the Central Government on the same subject. **View Notification** 





CENTRAL - ESIC - SEEDING AND AUTHENTICATION OF AADHAAR NUMBERS OF INSURED PERSONS & THEIR FAMILY MEMBERS.

The Employees' State Insurance Corporation vide Notification No. F.No. I-21013/1/2022-ICT dated 08.01.2024 issued provisions for seeding and authentication of Aadhaar of Insured Persons, ESIC employees and Pensioners. In order to facilitate ease of seeding and authentication of Aadhaar Numbers of Insured Persons & their family members, provisions have been developed by the ICT division:

IP Portal: Insured Person can seed the Aadhaar of self and their family members by logging into IP Portal.

Employer Portal: Employers can generate a new Insurance Number by authenticating the Aadhaar number of an employee through OTP or biometrics.

ESIC staff: Branch Offices/ DCBOs serve as facilities for Insured Persons to seed the Aadhaar number s of themselves and their family members. "AAA" Mobile app: Facility has been provided in "AAA" mobile app. Wherein IP can seed the Aadhaar Number of self and their family members either through OTP or face authentication <u>View Notification</u>





CENTRAL - ESIC - USER MANUAL FOR AADHAAR SEEDING FOR FACE AUTHENTICATION USING AAA+ MOBILE APP AND OTHER DEVELOPMENTS.

The Employees' State Insurance Corporation vide Notification No. P-14015/3/2022-BFT-II-PART (1) dated 10.01.2024 issued User Manual for Aadhaar seeding for face authentication using AAA+ Mobile App and other developments, wherein the ICT Branch (HQ) has made provisions/changes in application to speed up Aadhaar Seeding. The new feature in the AAA+ Mobile App is in addition to existing OTP Based Authentication & Biometric Authentication and all three processes for Aadhaar seeding shall continue until further orders.

**View Notification** 





CENTRAL - MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT: RIGHTS OF PERSONS WITH DISABILITIES (AMENDMENT) RULES, 2023.

The Department of Empowerment of Persons with Disabilities vide Notification number G.S.R. 07(E) dated 02.01.2024 published the Rights of Persons with Disabilities (Amendment) Rules, 2023, in the Gazette of India, whereby, in the Rights of Persons with Disabilities Rules, 2017, rule 15, sub-rule (1), after clause (h), clauses (i) and (j) shall be inserted: (i) guidelines on accessible and inclusive piped water supply for persons with disabilities and for other population groups with access challenges (j) accessibility standards for community toilets in Rural areas, specifies in the notification of the Department of Drinking Water and Sanitation, Government of India

**View Notification** 





CENTRAL - EPFO - EXTENSION OF FIVE MONTHS TIME FOR EMPLOYERS TO UPLOAD WAGE DETAILS ETC. REGARDING PENSION ON HIGHER WAGES.

The Press Information Bureau, Government of India, posted on 03.01.2024, that to ensure that employers process the remaining Applications for Validation of Option / Joint Options, the Chairman, CBT EPF has kindly approved the proposal to grant another extension of time for the employers for uploading wage details online etc. regarding Pension on Higher Wages, till 31st May, 2024. View Notification

### PUDUCHERRY - THE PUDUCHERRY FACTORIES (AMENDMENT) RULES, 2023.

The Government of Puducherry, Labour Department in reference to Notification no. G.O.Ms.No.1/AIL/Lab./G/2024 dated 02.01.2024 published the Puducherry Factories (Amendment) Rules, 2023 in the Gazette of Puducherry on 18.01.2024. <u>View Notification</u>





KARNATAKA - THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (KARNATAKA) (AMENDMENT) RULES, 2024.

The Karnataka Government vide Notification no. LD 359 LET 2023 dated 12.01.2024 officially published the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Karnataka) (Amendment) Rules, 2024 in the Karnataka Rajyapatra, Special State Gazette.

**View Notification** 





### STATUTORY

### NOTIFICATIONS/UPDATES

TELANGANA - EXEMPTION EXTENSION FOR ITES AND INFORMATION TECHNOLOGY ESTABLISHMENTS IN TELANGANA STATE FROM CERTAIN PROVISIONS OF THE TELANGANA SHOPS AND ESTABLISHMENTS ACT, 1988.

In reference to the circumstances reported by the Commissioner of Labour, Telangana, in the letter Lr.No.H2/3713/2017 dated 08.06.2023 and 19.09.2023 and in exercise of the powers conferred by section 73(4) of the Telangana Shops and Establishments Act, 1988, the Government of Telangana has vide G.O.Ms.No.30 dated 15.11.2023 exempted all Information Technology Enable Service (ITES) and Information Technology Establishments in the State of Telangana from the provisions of section 15, 16, 21, 23, and 31 of the Telangana Shops and Establishments Act, 1988 further for a period of one year w.e.f. 30.05.2023 subject to certain conditions View Notification





### HARYANA - ISSUING CONTRACTS IN NON-NAPS TO CANDIDATES ABOVE 35 YEARS OF AGE.

Labor Commissioner, Haryana, has issued a notice vide Notification no. Est0/04/2023/1364-1419 dated 11.01.2024, with reference to notification no. AP-4/Engagement of Apprentices/2023/2/974 dated 22.12.2023 issued by the Director General, Skill Development and Industrial Training Department, Haryana, Panchkula on the subject of issuing contracts in Non-Naps to the candidates above 35 years of age. As per NAPS – 2, to avail partial stipend support by the Government, at the time of registration, the upper age limit was fixed at 35 years. However, on the apprenticeship portal, as per NAPS – 2, the contracts for candidates above 35 years of age were not being generated and an error of age limit exceed was reflected. Therefore, now this age limit has been removed and as per the above-mentioned notification, if any organization decides to engage a candidate above 35 years of age as an apprentice, then such candidate can be engaged after issuing a contract in Non-NAPS category. But such an apprentice shall not be entitled to any subsidies under the NAPS.





**View Notification** 

HARYANA - ENGAGEMENT OF TRADE APPRENTICES
UNDER THE APPRENTICES ACT, 1951, FIRST ROUND
SCHEDULE FOR ENGAGING DESIGNATED TRADE
APPRENTICES IN THE YEAR 2024 FOR ALL GOVERNMENT
DEPARTMENTS AND SPSUs.

Labor Commissioner, Haryana has issued a notice vide Notification No. Est0/04/2024/1242-9 dated 10.01.2024, with reference to Memo no. TA/NAPS/2016/Stipend/Part-II/54 dated 02.01.2024 issued by the Department of Skill Development and Industrial Training on Engagement of Trade Apprentices under the Apprentice Act, 1951. Department of Skill Development and Industrial Training, Haryana, Chandigarh has released the Schedule for the first phase for appointing apprentices in the designated trades in all Government departments and SPSUs in the year 2024.









KERALA - GOVERNMENT OF KERALA - CONSUMER PRICE INDEX NUMBERS FOR AGRICULTURAL LABORERS AND INDUSTRIAL

WORKERS FOR THE MONTH OF NOVEMBER 2023.

Department of Economics and Statistics, Government of Kerala, vide Notification no. DES/1036/2023-P3(1) dated 16.01.2024 issued the Consumer Price Index Number for agricultural laborers and industrial workers for the month of November 2023 for all 17 districts in the State of Kerala.

**View Notification** 



### STATUTORY

### CORE

### NOTIFICATIONS/UPDATES

DECLARATION OF HALF DAY/FULL DAY HOLIDAY ON 22ND JANUARY 2024 FOR AYODHYA RAM MANDIR INAUGURATION.

Many States have declared half day/ full day Government/Public Holiday on January 22, 2024, for the Ram Mandir Inauguration to be held at Ayodhya, Uttar Pradesh. State wise details of the holiday along with respective notifications are as follows:

Full day: The States of Uttar Pradesh and Maharashtra declared a full day public holiday for all State Government Offices, Educational Institutions Banks and Insurance Companies.

Full day: the States of Chandigarh and Goa declared a full day holiday for all Government Offices, Boards, Corporations, Institutions and Industrial Establishments under Government administration. Half day: the States Gujarat, Uttarakhand, Haryana, Tripura, Delhi and Rajasthan declared a half day holiday till 2:30 PM for all Government Offices, Autonomous Bodies, Boards, Corporations, Local Bodies, PSUs, Schools, Colleges and Educational Institutions. The States of Chhattisgarh and Madhya Pradesh have declared a full day holiday and the States of Odisha and Assam have declared half day closing till 2:30 PM, through media communications. However, the respective Governments have not yet issued a formal notification of the declaration. View Notification



### GOVERNMENT OF KARNATAKA - KARNATAKA COMPULSORY GRATUITY INSURANCE RULES, 2024.

The Government of Karnataka vide Notification No. LD 397 LET 2023 dated 10.01.2024 officially published the Karnataka Compulsory Gratuity Insurance Rules, 2024 in the special state gazette, exercising the powers conferred by sub-section (4) of Section 4A of the Payment of Gratuity Act, 1972 (Central Act No. 39 of 1972).

Let's drive some logic on the Karnataka Compulsory Gratuity Insurance Rules, 2024 [henceforth referred to as "Rules"] published on January 10, 2024, based on the power conferred under Sub-section (4) of Section 4A of the Payment of Gratuity Act, 1972 [henceforth referred to as "Act"].

**Applicability** 

Section 4A(4) of the Act empowers the appropriate government to make rules to give effect to the provisions of Section 4A of the Act to make gratuity trust, gratuity fund, and recovery-related matters.

As per Section 2(a)(i)(b) of the Act, for private establishments operating in more than one state, the appropriate government is the central government, and in any other case, the state government.

As per the above, the rules are applicable to the establishments operating within the state of Karnataka.





### STATUTORY

### NOTIFICATIONS/UPDATES

**GOVERNMENT OF KARNATAKA - KARNATAKA COMPULSORY** 

**GRATUITY INSURANCE RULES, 2024.** 

#### **Insurance for Payment of Gratuity**

- 1. The new establishment must obtain the gratuity cover policy within 30 days of the commencement of these rules.
- 2. Existing establishments must obtain the gratuity cover policy within 60 days of the commencement of these rules.
- 3. Existing establishments hold a policy to make the payments and conduct due diligence.

#### **Recovery of Gratuity**

The controlling authority holds the power to recover the gratuity.

#### **Registration of Establishment**

- 1. Employer to submit the application for registration in "Form I" within 30 days of obtaining insurance along with details of the employees.
- 2. A change in the details of the insured employees is to be submitted to authority in "Form III" by the employer.
- 3. Authority to update the establishment details in "Form IV".





### GOVERNMENT OF KARNATAKA - KARNATAKA COMPULSORY GRATUITY INSURANCE RULES, 2024.

#### Establishments with an existing approved gratuity fund

Establishments already hold an approved gratuity fund trust and employing 500 or more employees who established a gratuity fund trust would require the following conditions:

- 1. Register the Gratuity Trust with the Indian Trust Act, 1882, or any other applicable law.
- 2. Trust to hold an equal number of members from employees and employer representatives.
- 3. The total number of members should not be less than 5.
- 4. Gratuity trusts maintain, privately, by the insurance company, or jointly, the calculated gratuity liability to be transferred to the fund by the employer.
- 5. Investment in the fund to be in line with applicable regulations.





GOVERNMENT OF KARNATAKA - KARNATAKA
COMPULSORY GRATUITY INSURANCE RULES, 2024.

#### Establishments with an existing approved gratuity fund

Establishments already hold an approved gratuity fund trust and employing 500 or more employees who established a gratuity fund trust would require the following conditions:

- 6. Gratuity trusts in the flow from the employer and the outflow to the eligible employees on separation; there is no other mode of withdrawal allowed.
- 7. The board of trustees should send the discharge letter and advise them to make the gratuity payments to the insurance company or trust.





GOVERNMENT OF KARNATAKA - KARNATAKA
COMPULSORY GRATUITY INSURANCE RULES, 2024.

#### **Penal Consequences**

As per Section 9 of the Act, an employer who contravenes or makes default in complying with any rule shall be punishable with imprisonment for a term not less than 3 months but extending to one year, with a fine not less than Rs. 10,000 but which may extend to Rs. 20,000, or with both.

**View Notification** 





GOVERNMENT OF PUNJAB - NOTIFICATION ON EXTENSION OF CERTAIN PROVISIONS UNDER THE ESI ACT, 1948.

The Government of Punjab, Department of Health & Family Welfare in consultation with the Employees' State Insurance Corporation and with the approval of the Central Government vide Notification No. 13/46/2020-SH4/1206 dated 1.12.2023, published in its Official Gazette, a notice of its intention to extend the provision of the ESI Act to the classes of establishments specified in the schedule annexed thereto, after one month form the date of publication in the official Gazette.

**View Notification** 





MANIPUR - THE MANIPUR LABOUR LAWS (EXEMPTION FROM RENEWAL OF REGISTRATION AND LICENSE BY ESTABLISHMENTS) ORDINANCE, 2023.

The Law & Legislative Affairs Department of Government of Manipur vide Notification number 2/38/2020-Leg/L dated 29.12.2023 published the Manipur Labour Laws (Exemption from Renewal of Registration and License by Establishments) Ordinance, 2023 in the Manipur Gazette.

**View Notification** 



## HARYANA - OFFICE OF ADDITIONAL DEPUTY COMMISSIONER, GURUGRAM, HARYANA : POSH ACT COMPLIANCE CHECKLIST (COMPREHENSIVE).

The Additional Deputy Commissioner, Gurugram-cum-District Officer under POSH Act, 2013 vide D.O. No. 483 dated 20.12.2023 issued the POSH Act Compliance Checklist for all Non-Govt. Organizations (companies, hospitals, banks, labs, schools, etc.) located in Gurugram, Haryana, whereby, the formation of an Internal Committee is legally mandated by the Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013.

#### **View Notification**

#### **NAGALAND - LIST OF HOLIDAYS FOR 2024**

State of Nagaland published List of Holidays for the year 2024. View Notification











**HIGH COURT OF RAJASTHAN -**

FACTORY NOT MANUFACTURING ARTIFICIALLY PREPARED SUBSTANCES WOULD NOT COME UNDER THE AMBIT OF THE

**EPF ACT:** 

(BRITE HENNA PRODUCTS VS. RPFC)

Brite Henna Products vs. The Regional Provident Fund Commissioner & Employees' Provident Fund Appellate Tribunal (High Court of Rajasthan)

Connected with

M/s. Parmanand & Co. vs. The Regional Provident Fund Commissioner & Employees' Provident Fund Appellate Tribunal (High Court of Rajasthan) On October 4, 2023, the High Court of Rajasthan pronounced a common judgement for both the above-mentioned cases, wherein it held that a factory not manufacturing artificially prepared substances would not come under the ambit of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Since common questions of fact and law are involved in both these writ petitions, the Court took into consideration the facts involved in the case of Brite Henna Products vs. The Regional Provident Fund Commissioner & Employees' Provident Fund Appellate Tribunal.





## COREINTEGRA

#### Facts of the case:

The petitioner is involved in the business of manufacturing Mehandi powder also known as Henna by grinding dry henna leaves, with the help of labour and some grinding machines known as pulverizers and thereafter packed in polythene bags and sold in the market. The entire process, right from grinding the dry leaves to packing, neither involves any chemical mixing nor any other synthetic material is used in it. The final product is simply obtained by grinding the leaves into fine powder.

On a survey conducted by the concerned authorities at the business place of the petitioner, proceedings were initiated for covering the petitioner under the provisions of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereafter referred as EPF Act) an after giving a show cause notice and taking reply of the petitioner on record, an order under section 7A of the EPF Act was passed holding that the petitioner is covered under the EPF Act as a 'Trade and Commercial Establishment'.



Aggrieved by the above, the petitioner preferred an appeal before the Tribunal constituted under section 7-I of the EPF Act. The Tribunal decided that neither the Petitioner was a 'Trading and Commercial Establishment' and nor does it properly and fully fall within the meaning of Entry No. (viii) 'Heavy & Fine Chemicals', as per Schedule I of the EPF Act. However, despite the above observation, the Tribunal held that the petitioner should be covered under the Act from the date of the order passed by the RPFC. Therefore, dissatisfied by the order of the Tribunal, the Petitioner filed the instant appeal before the High Court of Rajasthan.

#### Judgment delivered by the high court of Rajasthan:

The High Court, after taking into consideration the line of facts and the arguments put forth by the respective learned counsels, went on to scrutinize the applicability of the provisions of the EPF Act on the Petitioner company. The Court vehemently pointed out that as per section 1(3)(a) of the EPF Act, the provisions contained in section 16 apply to all such establishments which is a factory engaged in any industry stipulated in Schedule I to the Act. Therefore, the Court's reading of Schedule I to the EPF Act revealed that Henna is not included in the Schedule.



Further, on the Tribunal's view that the Petitioner firm is covered under the category of Heavy and Fine Chemicals, even though not fully, the High Court of Rajasthan observed that as per the definitions of the terms 'Heavy Chemicals' and 'Fine Chemicals', the observation made by the Tribunal is not sustainable. The Tribunal further held that the Petitioner firm qualifies under the heading of "Heavy and Fine Chemicals", as in its view Henna falls within the ambit of an 'Intermediate Dye'. However, the High Court held this observation of the Tribunal to be unsustainable, having regard to the definition of the term 'Intermediate Dye'.

The Court made a final observation as to the fact that the petitioner firm is engaged in the manufacturing of Henna powder, which is prepared by simply grinding the dried henna leaves with the help of a pulverizer or grinder. This indicates that the petitioner firm is not involved in the preparation of such substance/compound which is artificially prepared or purified later.

Considering the above observations, the High Court allowed the present writ petition, quashed the orders of the RPFC and finally set aside the orders of the Appellate Tribunal. The Court concluded that the petitioners are not required to comply with the provisions of the EPFC Act, as they do not fall within the ambit of

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the Act. View Judgment

COREINTEGRA

**HIGH COURT OF DELHI -**

TERMINATION FOR LOSS OF CONFIDENCE IS JUSTIFIED WHEN

THE WORKMAN HAS CONFESSED MISAPPROPRIATION:

(DELHI STATE CIVIL SUPPLY VS. SH. BADAN SINGH)

In a judgment delivered on 30 August 2019, the High Court of Delhi held that the law with respect to loss of confidence is that reinstatement cannot be ordered when an employee acts in a manner by which the management loses confidence in him. In case of loss of confidence, only compensation can be awarded. The Court took reference to the case of State Bank of Travancore vs. Prem Singh and several other cases, while re-establishing the principles underlying "loss of confidence".

**Issue of the case:** Whether an employee can be reinstated to service, who has been terminated by employer due to loss of confidence in him?





#### Facts of the case:

The petitioner, i.e., the employer engaged the respondent (deceased) on daily wages on 08 September 1987. The respondent deposited deficient sale proceeds in December 1989, February 1990, March 1990 and in April 1990, of varying amounts in each month. The petitioner issued memos to the respondent on 22nd February 1990 and on 12 April 1990. Thereafter, on 29 May 1990, the petitioner terminated the services of the respondent on the grounds of loss of confidence. On 20th February 1992, the respondent admitted the deficiency of Rs. 16,783.23 and assured to deposit the same. The respondent, challenging his termination from service, raised an industrial dispute which was referred to the Labour Court.

The Labour Court awarded the respondent reinstatement to service with 40% back wages. Aggrieved by this award, the instant petition was filed by the employer in the High Court of Delhi.

#### Judgement delivered by the High Court of Delhi:

The High Court of Delhi took resort to the case State Bank of Travancore v. Prem Singh and several other similar cases, to reiterate the principles underlying the concept of "loss of confidence". The Court summarized the principles as follows:



- 1.When an employee acts in a manner in which the management loses confidence in him, his reinstatement cannot be ordered because it would neither desirable nor expedient to continue the employee in service.
- 2.The plea of loss of confidence by the employer must be bonafide. It cannot be subjective and must be based on objective facts.
- 3.The bonafide opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, is final and not subject to review by the industrial adjudication.
- 4.In a case of misconduct leading to loss of confidence, it is not mandatory for the employer to hold a departmental inquiry against the employee and charge him with penal action, even if such misconduct happens to be that of the employee. The employer, in its discretion, may invoke the power to discharge the employee from service on grounds of loss of confidence.
- 5. The reinstatement of an employee terminated for loss of confidence cannot be ordered even if the inquiry held by the employer has been held to be bad.





6.The reinstatement of an employee terminated for loss of confidence for involvement in a criminal case cannot be directed even if the employee is able to secure an acquittal or discharge in the criminal case.

7.Reinstatement has not been considered desirable in cases where there has been a strained relationship between the employer and employee. The Courts also seem to deny reinstatement in cases where long time has lapsed or where the industry itself has become sick.

In view of the above conceptual analysis, the Court observed that there was no infirmity in the termination of the respondent and therefore, set aside the award of the Labour Court. However, compensation of Rs. 75,000/- was awarded to the widow of the deceased respondent, to be paid within three weeks from the date of judgment. The amount paid by the petitioner under section 17B of the Industrial Dispute Act shall also be treated as compensation.

**View Judgment** 

#### **HIGH COURT OF MADRAS -**

The Regional Sales Office shall not be treated as a 'Factory' :(R. Seshasayee v. Dy. Chief Inspector of Factories)

R. Seshasayee v. The Deputy Chief Inspector of Factories, Tiruvallur, 2019 LLR 1230 (High Court of Madras)

The High Court of Madras, on 26th June 2019, pronounced a judgement, wherein it held that a Regional Sales Office shall not be treated as a 'Factory'.

**Issue of the case:** Whether a Regional Sales Office having a battery charger, a compressor to inflate tyres and the facility for doing minor painting and touch up, can be treated as a 'Factory'?

#### Facts of the case:

The Petitioner is having factories at Ennore and Hosur in Tamil Nadu, Bhandara in Maharashtra, and Alwar in Rajasthan.









They manufacture chassis for commercial vehicles. The Petitioner is having Regional Sales Office at Sembarambakkam, near Chennai. The chassis received from the factories are kept in the Regional Sales Office in Chennai. The petitioner is having Regional Sales Office in every State.

The Regional Sales Office at Sembarambakkam is situated in an area of 7 acres and approximately 600 to 700 chassis are stored in the said Regional Sales Office for sale. The said Regional Sales Office is having a battery charger and a compressor to inflate the tyres, as the chassis are stored in an open area and sometimes for a longer duration and the battery may require recharging or the tyres may require inflation. The Office also has a facility for doing minor paintings and touch-ups, as and when required.

The petitioner engages casual workmen as and when required to carry out activities in the Regional Sales Office. The petitioner has also engaged an outside security agency to provide security. The Respondent, on their visit to the Regional Sales Office of the petitioner at Sembarambakkam, found that 15 persons were working in the establishment, 3 executives, 5 security guards and 7 casual workers. The respondent, thereafter, issued a show cause notice to the petitioner calling upon the petitioner as to why it shall not be prosecuted for not having complied with the provisions of the Factories Act, 1948. The petitioner sent a detailed reply and submitted that the petitioner would not be a factory within the meaning of section 2(m) of the Factories At, 1948 and requested for a personal hearing. The respondent, without giving the opportunity for a personal hearing, rejected the explanation of the petitioner and proceeded to enforce the provisions of the Factories Act, 1948.







The respondent did not provide findings with jurisdiction and the petitioner's right to appeal was also defeated. Therefore, the petitioner has filed the present Writ Petition.

#### Judgement delivered by the High Court of Madras:

The High Court of Madras observed that it was the contention of the respondent that all the 15 people engaged in the Regional Sales Office, on the day of their visit, are workers under section 2(k) of the Factories Act, 1948. However, there is nothing on record to show that servicing and minor repair works of printing and painting of broken parts are done in the Regional Sales Office. Therefore, the Court was of the view that the Regional Sales office will not be a factory as the petitioner has not carried out any manufacturing process by employing 10 or more persons on any day of the preceding 12 months.

**View Judgment** 

### IMPORTANT JUDGEMENTS

### CORE

#### **HIGH COURT OF MADRAS -**

Financial constraints or delayed remittance are not sufficient causes to reduce damages reasonably

(RPFC vs. The Presiding Officer, EPFAT)

The Regional Provident Fund Commissioner vs. The Presiding Officer, Employees' Provident Fund Appellate Tribunal & Anr., 2021 LLR 634 (High Court of Madras).

In the above-mentioned case, the High Court of Madras upheld the contention that it cannot interfere with the quantum of damages levied under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereafter referred to as the Act). It cannot modify or reduce the quantum of damages by extending any leniency or misplaced sympathy which would affect the very object sought under the Act.

**Issue of the case:** Can the quantum of damages levied for delayed payment of PF contributions, be reduced on the ground of financial crisis?





### COREINTEGRA

#### Facts of the case

The second respondent, M/s. Coimbatore Pioneer Mills Limited is an establishment covered under the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 and the schemes framed thereunder. The establishment had been a chronic defaulter in payment of PF dues for many years. It was a continued defaulter in the payment of the Provident Fund, Pension, and Insurance Fund Contribution payable under sections 6, 6A and 6C of the Act and other statutory charges within the due dates prescribed under the Act and the Scheme. The first respondent conducted inquiries under section 7A of the Act and quantified the dues payable by the establishment.

Even after the quantification of the dues, the establishment did not initiate remittance of the same. Therefore, the petitioner issued a show cause notice to the second respondent calling for a personal hearing under section 14B of the Act. The EPFO had credited the interest to the member's account, the employer is bound to compensate the interest granted to the members of the fund. Considering the same, the petitioner has levied a sum of Rs. 1,02,33,958/- as penal damages under section 14 B of the Act and a sum of Rs. 91,94,478/- as interest under section 7Q of the Act.





The establishment challenged the levy of the above sum of damages and interest by filing an appeal before the first respondent, i.e., Employees' Provident Fund Appellate Tribunal. The Appellate Tribunal set aside the order passed by the petitioner under section 14B of the Act and additionally permitted the employer to pay the interest amount in 36 equal installments. Aggrieved by this order passed by the Appellate Tribunal, the present writ petition has been filed by the petitioner under Article 226 of the Constitution.

#### **Decision of the Madras High Court:**

As per the arguments of the learned counsel for the Petitioner, the second respondent firm was a defaulter in payment of contribution within the prescribed due dates for many years as per section 14B of the Act.

As per the provisions of the EPF Act, the Authorities are empowered to quantify the damages, considering several factors. Accordingly, based on all the factual aspects, the RPFC has quantified the damages as 1,02,33,958/- as penal damages and a sum of Rs. 91,94,478/- as interest under section 7Q of the Act to be levied on the second respondent. The learned counsel for the petitioner referred to a few cases such as M/s. Lakshmi Machine Works Limited, Coimbatore vs. Union of India, to establish their arguments before the court of law.

# IMPORTANT JUDGEMENTS



The Court was also of the opinion that the in case of absence of mens rea, the quantum of compensation is to be considered by the Competent Authority, specifically, situations of financial crisis, factual circumstances and other situations that the employer was not in a position to deposit the contribution within the prescribed limit.

Conclusion: Since the second respondent was a sick unit and facing financial crisis, the Court decided to grant time by way of instalment for depositing damage amount. However, the High Court cannot interfere with the quantum of the damages, and neither can it modify or reduce the quantum of damages by showing leniency or sympathy as it would affect the very object of the EPF Act. It can only test the way assessments were made. Therefore, the Court directed the second respondent to deposit the damages and interest as quantified by the authorities under section 7Q of the Act, in 5 equal instalments.

**View Judgment** 

# IMPORTANT

JUDGEMENTS

**HIGH COURT OF GAUHATI -**FAILURE TO COMPLY WITH TRANSFER ORDER IS A MAJOR **MISCONDUCT JUSTIFYING DISMISSAL FROM SERVICE:(SRI SEKHAR RUDRA VS. UOI)** 

Sri Sekhar Rudra vs. The Union of India & Ors., 2016 (Gauhati High Court) In a Judgement and Order passed in the year 2016, the High Court of Gauhati held that the misconduct of remaining absent from duty and defiance of legitimate transfer order, would not warrant any lesser punishment than dismissal from service for such a delinquent.

Issue of the case: Whether the action of the Respondent company dismissing the service of the petitioner Sri Sekhar Rudra w.e.f 22/7/2003 is justified, for not complying with a legitimate transfer order and remaining absent from duty for four long years?





# IMPORTANT JUDGEMENTS

Facts of the case

The petitioner was a Grade-VIII Assistant in the Pipeline Division of Oil India Ltd. He was promoted to Grade-IX and transferred. However, in order continue his service in Guwahati, the petitioner had foregone his promotion and, in this manner, continued to serve in Guwahati without being moved to any other transferable Pipeline Division of the Oil India Ltd. Eventually, through a transfer order dated 17.7.1998, the petitioner was again transferred to Dumer in Bihar. The said transfer order was opposed by the employee stating that a settlement dated 7.8.1990 was in force, wherein the employee who had foregone their promotions were to be retained by the management of the company.

On this regard, the Management replied stating that it had terminated the said settlement order in 16.5.1998 in lieu of a notice issued under section 19(2) of the Industrial Disputes Act and therefore the petitioner is not entitled to protection under the terminated settlement of 7.8.1990. Thus, the petitioner was released from Guwahati on 23.7.1998.



### IMPORTANT JUDGEMENTS



Thereafter, the employee raised an Industrial Dispute, challenging the transfer order. On failure of the conciliation attempt, the petitioner filed a civil suit before this Court to challenge the transfer order. The Court observed that the settlement order dated 7.8.1990 was legally terminated by the management by issuing due notice under section 19(2) of the ID Act and therefore the Court declined to interfere with the transfer order.

Thus, the petition was dismissed with the observation that the representation of the petitioner for a nearer place of posting should be considered by the management. However, due to lack of vacancies at the nearby stations, the petitioner's representation for the desired posting could not be considered and therefore, the employee was expected to comply with the transfer order dated 17.7.1998. The employee's failure to comply with the transfer order led to the issuing of a charge sheet against him.

The Inquiry Officer found that the defiance of the petitioner to comply with the transfer order and his absence from duty for four years was an act of gross indiscipline.





After giving an opportunity of representation to the delinquent, the disciplinary authority accepted the enquiry report. Considering the gravity of the misconduct, the disciplinary authority decided to dismiss the delinquent from service. This order of dismissal was challenged by the petitioner in an Industrial Dispute, which was ultimately referred for adjudication under section 10 of the ID Act by the Central Government.

According to the Industrial Tribunal, the petitioner was in a transferable job, but he defied the transfer order for about 4 years and remained absent from duty. Therefore, as per the Standing Order of the Company, the petitioner committed a major misconduct. The Tribunal also examined the proportionality of the punishment and after due consideration it was held that the delinquent was rightly dismissed from service.

#### **Observation of the Gauhati High Court:**

Scrutinizing the above factual matrix, the High Court observed that the findings against the petitioner were entirely based on documentary evidence, which clearly indicated that the delinquent intentionally did not comply with the transfer order.

# IMPORTANT JUDGEMENTS



He had agreed to move to the transferred station only after the dismissal of his punishment of removal from service, by this Court. There was no infirmity in the findings of the Inquiry Officer against the petitioner and it was evident that the delinquent was given fair opportunity of representation.

Since the petitioner has also challenged the punishment of dismissal imposed on him by the management, stating it to be disproportionate, the Court examined this aspect as well. It is evident that the petitioner repeatedly refused to proceed to the transferred station by defying the transfer order for a period of four years. The transfer order was not deferred or stayed by any Court; therefore, the petitioner was bound to comply with the transfer order. The Court held that the petitioner "displayed a belligerent attitude" towards the transfer order. It is clearly a case of defiance of legitimate order by a transferable employee and therefore, considering all the above, the High Court held that the nature of misconduct committed by the petitioner by remaining absent from duty and not complying with a legitimate transfer order, would not attract any lesser punishment of dismissal from service for such kind of delinquency. Therefore, the Court dismissed the instant petition as it was devoid of merit in the eyes of law. View Judgment





#### SUPREME COURT OF INDIA

Failure to avail remedy against transfer order would imply its acceptance. View Judgement

EPF Act can be applied even to factories not engaged in Schedule I industries. View Judgement

No severance of master-servant relation on non-payment of subsistence allowance during suspension. <u>View Judgement</u>

Central Govt. has the power of bringing establishments within purview of the EPF Act. <u>View Judgement</u>

#### **ALLAHABAD HIGH COURT**

Second Maternity Leave can be claimed within two years from First Maternity Leave. <u>View Judgement</u>

#### **ANDHRA PRADESH HIGH COURT**

Section 7A order without impleading necessary parties despite requests is improper. <u>View Judgement</u>





#### **BOMBAY HIGH COURT**

Trust's employees cannot be brought under the ambit of the ESI Act merely because their salary is maintained together with employees of a covered establishment. **View Judgement** 

Food supervisor of a hospital is a 'workman' under the Industrial Disputes Act. <u>View Judgement</u>

Pushing co-worker causing multiple injuries is a grave misconduct justifying dismissal. View Judgement

#### **GUJARAT HIGH COURT**

Excess amount is adjustable against future payments of EPF contributions. View Judgement

Interest under section 7Q is not for the PF trust or the PF authority. View Judgement

Grant of exemption under the ESI Act cannot be denied without assigning any reason. <u>View Judgement</u>





#### **HIMACHAL PRADESH HIGH COURT**

National Lok Adalat cannot transfer disputes from Labour Court. View Judgement

#### JHARKHAND HIGH COURT

Occupier and manager are not responsible for accident if safety equipment was provided. <u>View Judgement</u>

#### **KARNATAKA HIGH COURT**

The EPF Act places a cap on the imposable rate of interest under section 7Q View Judgement

Notification revising minimum wage rates by adding just 10% over the earlier rates is arbitrary. <u>View Judgement</u>

Workman who questioned termination before Labour Court is not eligible for gratuity. <u>View Judgement</u>





#### **KERALA HIGH COURT**

Condonation of delay is proper if appeal was filed before wrong authority on RPFC"s direction. <u>View Judgement</u>

Show cause notice for a demand already paid is unsustainable. View Judgement

#### **MADHYA PRADESH HIGH COURT**

New claims of overtime cannot be taken after commencement of evidence. View Judgement

#### **MADRAS HIGH COURT**

Past record is relevant while imposing punishment **View Judgement** 

Workman terminated by contractor cannot move against the principal employer. <u>View Judgement</u>

Maintenance supervisor of a school is not a 'workman' under the ID Act. <u>View Judgement</u>





#### **PUNJAB AND HARYANA HIGH COURT**

Leave encashment is excluded from 'basic wages' under the EPF Act. View Judgement

Payment of assessed amount under protest does not debar employer from filing appeal.

#### **View Judgement**

Order of ESI Authority without recording name and place of employees is illegal. View Judgement

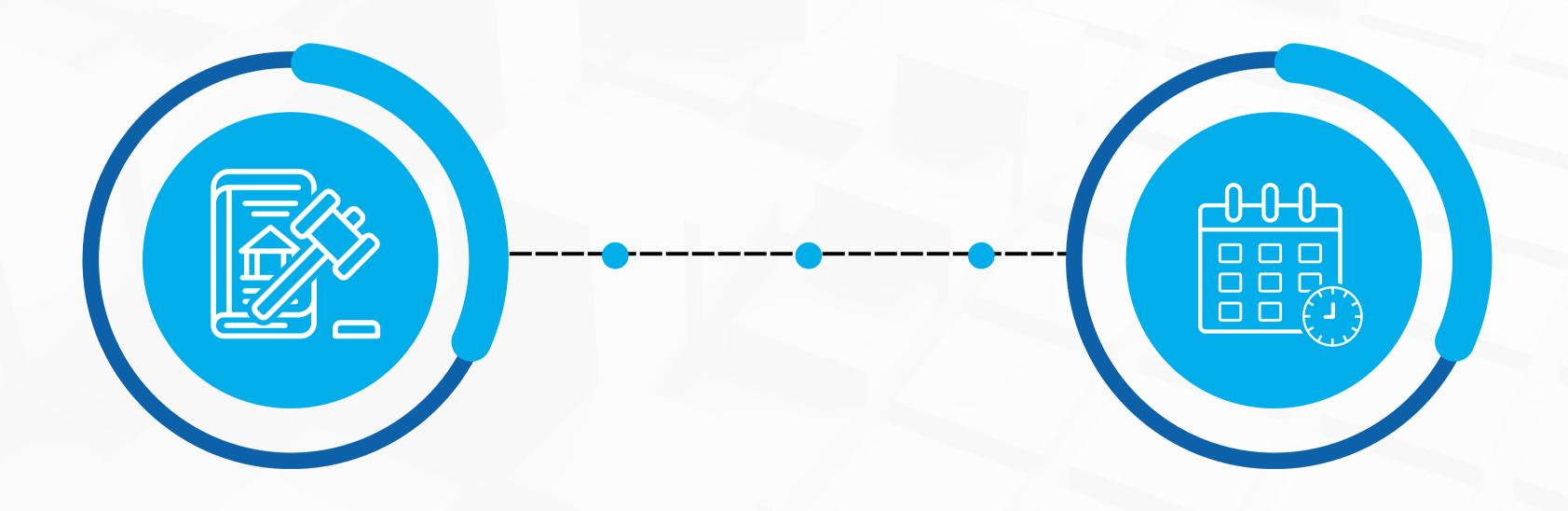
Mere opportunity of hearing is not sufficient to uphold finding against employer. <u>View Judgement</u>

#### **RAJASTHAN HIGH COURT**

Issuance of chargesheet cannot be challenged in Writ Petition. View Judgement



# STATUTORY DUE DATES



### STATUTORY DUE DATES FEBRUARY-2024



Name of Act	State	Remittance / Return	Frequency	Period	Due Date (On or Before)	Applicability	Remarks
Payment of Bonus Act, 1965	All States	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Employee State Insurance Act, 1948	All States	Remittance	Monthly Contribution Challan	Jan'24	15-Feb-24	Code wise	
Employee Provident Fund And Miscellaneous Provisions Act, 1952	All States	Remittance	Monthly Contribution Challan	Jan'24	15-Feb-24	Code wise	
Employee Provident Fund And Miscellaneous Provisions Act, 1952	All States	Return	International Workers Return	Jan'24	15-Feb-24	Code wise	
Employee Provident Fund And Miscellaneous Provisions Act, 1952	All States	Return	Monthly Return - EDLI Exempted Employer	Jan'24	25-Feb-24	Code wise	

## STATUTORY DUE DATES FEBRUARY-2024



Name of Act	State	Remittance / Return	Frequency	Period	Due Date (On or Before)	Applicability	Remarks
Minimum Wages Act, 1948	Assam	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Punjab Labour Welfare Fund Act,1965	Chandigarh	Remittance	Unpaid Accumulation & Fine	Oct'23 To Dec'23	01-Feb-24	Branch	Unpaid Accumulation - After 3 years from become payable
Minimum Wages Act, 1948	Goa	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	Not required - Covered under Various Acts
Factories Act, 1948	Gujarat	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	Not required - If Self Certificate submitted
Minimum Wages Act, 1948	Gujarat	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Punjab Labour Welfare Fund Act,1965	Haryana	Remittance	Unpaid Accumulation & Fine	Oct'23 To Dec'23	01-Feb-24	Branch	Unpaid Accumulation - After 2 years from become payable
Factories Act, 1948	Himachal Pradesh	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	Leave with Wages
Factories Act, 1948	Himachal Pradesh	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	Compensatory Holiday
Minimum Wages Act, 1948	Himachal Pradesh	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Minimum Wages Act, 1948	Jammu & Kashmir	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	

## STATUTORY DUE DATES FEBRUARY-2024



Name of Act	State	Remittance / Return	Frequency	Period	Due Date (On or Before)	Applicability	Remarks
Factories Act, 1948	Karnataka	Return	Combined Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	Online - Covering (CLRA, MB, MW, POW, POB)
Minimum Wages Act, 1948	Kerala	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Minimum Wages Act, 1948	Meghalaya	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Minimum Wages Act, 1948	Mizoram	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Punjab Labour Welfare Fund Act,1965	Punjab	Remittance	Unpaid Accumulation & Fine	Oct'23 To Dec'23	01-Feb-24	Branch	Unpaid Accumulation - After 3 years from become payable
Minimum Wages Act, 1948	Sikkim	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Minimum Wages Act, 1948	Tripura	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Minimum Wages Act, 1948	West Bengal	Return	Annual Returns	Jan'23 To Dec'23	01-Feb-24	Branch	
Kerala Shops and Commercial Establishments Workers Welfare Fund Act,2006	Kerala	Remittance	Monthly Contribution	Jan'24	05-Feb-24	Branch	
Andhra Pradesh Tax On Professions, Trades, Callings And Employments Act, 1987	Andhra Pradesh	Remittance	Monthly Remittance & Filing of Return	Jan'24	10-Feb-24	Branch	

## STATUTORY DUE DATES FEBRUARY-2024



Name of Act	State	Remittance / Return	Frequency	Period	Due Date (On or Before)	Applicability	Remarks
Madhya Pradesh Vritti Kar Adhiniyam, 1995 (PT)	Madhya Pradesh	Remittance	Monthly Remittance	Jan'24	10-Feb-24	Branch	
Telangana Tax On Professions, Trades, Callings And Employments Act, 1987	Telangana	Remittance & Returns	Monthly Remittance & Filing of Return	Jan'24	10-Feb-24		
Contract Labour (Regulation and Abolition) Act,1970	Delhi	Return	PE Annual Returns	Jan'23 To Dec'23	15-Feb-24	Branch	PE
Contract Labour (Regulation and Abolition) Act,1970	Goa	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Registration Certificate	Not required - Covered under Various Acts
Contract Labour (Regulation and Abolition) Act,1970	Gujarat	Return	PE Annual Returns	Jan'23 To Dec'23	15-Feb-24	Registration Certificate	Not required - If Self Certificate submitted
Gujarat Panchayats, Municipal Corporations And State Tax on Professions, Traders, Callings and Employments Act, 1976	Gujarat	Return	Monthly Returns	Jan'24	15-Feb-24	Branch	
Payment of Wages Act, 1936	Gujarat	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Branch	
Contract Labour (Regulation and Abolition) Act,1970	Jharkhand	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Branch	PE
The Jharkhand Tax On Profession, Trades, Callings And Employments Act, 2011	Jharkhand	Return	Quarterly Return	Oct'23 To Dec'23	15-Feb-24	Branch	Employee & Employer Tax online (Employer to deduct monthly and remit quarterly)
Contract Labour (Regulation and Abolition) Act,1970	Kerala	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Branch	PE

## STATUTORY DUE DATES FEBRUARY-2024



Name of Act	State	Remittance / Refurn	frequency	Period	Due Date (On or Before)	Applicability	Remarks
Factories Act, 1948	Maharashtra	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Branch	Accident Details
Contract Labour (Regulation and Abolition) Act,1970	Puducherry	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Registration Certificate	PE
Contract Labour (Regulation and Abolition) Act,1970	Tamil Nadu	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24		Not required if (Combined Annual Return Form 22 submitted in Factories Act) or (Combined annual return Form XIII submitted in TN Catering Establishments)
Contract Labour (Regulation and Abolition) Act,1970	Uttar Pradesh	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Registration Certificate	PE
Payment of Wages Act, 1936	Uttar Pradesh	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Branch	Applicable to Factories and Industrial Establishments
Payment of Wages Act, 1936	Uttarakhand	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Branch	Only Factory
Contract Labour (Regulation and Abolition) Act,1970	West Bengal	Return	Annual Returns	Jan'23 To Dec'23	15-Feb-24	Registration Certificate	PE
arnataka Tax on Professions, Trades, Callings and Employments Act, 1976	Karnataka	Remittance & Returns	Monthly Remittance & Filing of Return	Jan'24	20-Feb-24	Combined	
West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979	West Bengal	Remittance	Monthly Remittance & Filing of Return	Jan'24	21-Feb-24	Branch	
Maharashtra State Tax on Professions, Trade, Callings And Employments Act, 1975	Maharashtra	Remittance & Returns	Monthly Remittance & Filing of Return	Jan'24	28-Feb-24	Combined	

## STATUTORY DUE DATES FEBRUARY-2024



Name of Act	State	Remittance / Return	frequency	Period	Due Date (On or Before)	Applicability	Remarks
Manipur Professions, Trades, Callings And Employments Taxation Act, 1981	Manipur	Remittance & Returns	Monthly	Jan'24	28-Feb-24	Branch	
Meghalaya Professions, Trades, Callings And Employments Taxation Act, 1947	Meghalaya	Remittance & Returns	Monthly	Jan'24	28-Feb-24	Branch	
Mizoram Professions, Trades, Callings and Employments Taxation Act, 1995	Mizoram	Remittance & Returns	Monthly	Jan'24	28-Feb-24		
Nagaland Professionals,Trades,Calling and Employment Taxation (4th Amendment) Act ,2012	Nagaland	Remittance & Returns	Monthly	Jan'24	28-Feb-24	Branch	
Punjab State Development Tax 2018	Punjab	Remittance & Returns	Monthly	Jan'24	28-Feb-24		
ikkim Tax On Professions, Trades, Callings And Employments, Act 2006	Sikkim	Remittance & Returns	Monthly	Jan'24	28-Feb-24	Branch	
ripura Professions Trades Callings And Employments Taxation Act, 1997	Tripura	Remittance & Returns	Monthly	Jan'24	28-Feb-24	Branch	
Assam Professions, Trades, Callings And Employments Taxation Act, 1947	Assam	Remittance & Returns	Monthly Remittance & Filing of Return	Jan'24	29-Feb-24	Branch	
Kerala Panchayat Raj Act, 1994 (PT)	Kerala	Remittance	Half Yearly Remittance	Oct'23 To Mar'24	29-Feb-24	Branch	Period (Oct to Mar) No Registration Required
rissa State Tax On Professions, Trades, Callings And Employments Act, 2000	Odisha	Remittance	Monthly Remittance & Filing of Return	Jan'24	29-Feb-24	Branch	



# AWARDS AND CERTIFICATIONS



### **AWARDS**

"It is an honor to receive this award, and we deeply grateful for the recognition".















### CERTIFICATION



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