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ADVOCATES AND ATTORNEYS

Employment Law Update

2026 Aug - Sep

Introduction

The August-September 2026 edition of our Labour and Employment newsletter covers significant developments across judicial decisions, labour-code rule making and employer compliance.

A key highlight is the Supreme Court's decision in State of U.P. v. Jai Bir Singh (August 20, 2026), where the nine-judge Bench considered whether the "triple test" for determining an "industry" under the Industrial Disputes Act, 1947, required reformulation. While no single reformulation secured a majority, the Court held that pending disputes under the Industrial Disputes Act will continue to be decided under the 1978 test, with the interpretation of "industry" under the Industrial Relations Code, 2020 remaining open for determination.

The newsletter also covers the continuing implementation of the four labour codes across States, including the finalisation of rules in Andhra Pradesh and Uttar Pradesh, Bihar's risk-based inspection and classification framework, and recent amendments to the Karnataka Shops and Commercial Establishments Act. Key developments from the EPFO and ESIC, including the VISHWAS, 2026 settlement scheme and decentralisation of revenue recovery functions, are also discussed.

The judicial updates examine issues including resignation and ratification, the "washed-off theory" in service matters, suppression of criminal antecedents, treatment of unadjudicated EPF interest and damages in insolvency proceedings, and the maintainability of writ proceedings against trade unions in relation to proposed strikes.
These developments reflect the evolving regulatory and judicial landscape under India's labour law framework and highlight areas requiring continued attention from employers.

Notification and Circulars

Ministry of Labour and Employment issues corrigenda to the Employees' Pension Scheme, 2026

The Ministry of Labour and Employment has, through G.S.R. 704(E) dated August 4, 2026 ("**Corrigenda**"), corrected ten drafting errors in the Employees' Pension Scheme, 2026 ("**EPS 2026**") as originally notified vide G.S.R. 527(E) dated June 29, 2026. The Corrigenda has been published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i). EPS 2026 was notified under Section 15(1)(b) of the Code on Social Security, 2020, in supersession of the Employees' Family Pension Scheme, 1971 and the erstwhile Employees' Pension Scheme, 1995, and the Corrigenda forms part of the continuing exercise of operationalising the Scheme following its notification. A companion corrigendum, G.S.R. 705(E) of the same date, has separately corrected the Employees' Deposit Linked Insurance Scheme, 2026.

The corrections are principally clarificatory. They substitute the expression "security agreement" with "social security agreement", substitute "pay" with "wages" for consistency with terminology used elsewhere in the Scheme, remove a reference to "penalty" alongside "damages" recoverable from a defaulting employer, clarify that the wage ceiling referred to in the Scheme operates by reference to the applicable wage ceiling period, and correct the method of computing certain aggregate amounts under the provisions governing pension calculation.

While the Corrigenda does not alter the substantive entitlements or contribution obligations under EPS 2026, employers, payroll administrators and pension processing teams should ensure that they are working from the corrected text of the Scheme, particularly in relation to the computation of the wage ceiling period and the aggregate amounts payable on exit, so as to avoid errors arising from reliance on the uncorrected version of the Scheme as originally published in June 2026.

Government of Maharashtra revises the Special Allowance payable with minimum wages for the half year commencing July 1, 2026

The Office of the Labour Commissioner, Maharashtra, has, through a notification dated August 5, 2026, declared the revised Special Allowance, that is, the Variable Dearness Allowance, payable along with the basic minimum wage for the half year beginning July 1, 2026, and ending December 31, 2026. The revision follows the half yearly cycle under which the applicable Special Allowance in Maharashtra is periodically recalibrated by reference to movement in the Consumer Price Index for Industrial Workers, so as to preserve the real value of the minimum wage payable in scheduled employments in the State.

The notified Special Allowance for the present half year stands at Rs. 4,134 per month, uniform across Zone I, Zone II and Zone III, and is payable in addition to the applicable basic rate for the skilled, semi-skilled and unskilled categories in each zone. Taking the Special Allowance together with the applicable basic rate, the aggregate minimum wage payable in Zone I, comprising Municipal Corporation limits, Cantonment areas and industrial areas within a 20-kilometre radius of Municipal Corporation limits including Mumbai, Pune, Navi Mumbai, Thane, Nagpur, Nashik and Chhatrapati Sambhajinagar, ranges from Rs. 14,155 per month for unskilled workers to Rs. 15,766 per month for skilled workers. Corresponding aggregate rates for Zone II, comprising A and B grade Municipal Council areas, and Zone III, comprising the remaining areas of the State, are correspondingly lower, reflecting the zone wise differential that has traditionally applied to minimum wages in Maharashtra.

Establishments operating in Maharashtra, including those in the shops and commercial establishments, factory and other scheduled employment categories, are required to ensure that wages paid to workers with effect from July 1, 2026, are aligned with the revised Special Allowance, failing which arrears would fall due for the intervening period. Payroll teams should update the applicable minimum wage tables with reference to the correct zone classification of each establishment and should ensure that wage slips and wage registers maintained under the Payment of Wages Act, 1936 and the Code on Wages, 2019 correctly reflect the basic rate and the Special Allowance as separate line items.

Government of Andhra Pradesh notifies the final Occupational Safety, Health and Working Conditions (Andhra Pradesh) Rules, 2026

The Government of Andhra Pradesh, Labour, Factories, Boilers and Insurance Medical Services (Lab.II) Department, has, through G.O.Rt.No.146 dated August 6, 2026 ("Notification"), notified the final Occupational Safety, Health and Working Conditions (Andhra Pradesh) Rules, 2026 ("**AP OSH** Rules") in exercise of the powers conferred under Sections 133 and 135 of the Occupational Safety, Health and Working Conditions Code, 2020 ("**OSHWC Code**"). The Notification has been published in the Andhra Pradesh Gazette (Extraordinary), Part I, on August 7, 2026, and follows the preliminary draft notified vide G.O.Rt.No.68 dated April 1, 2026. With the AP OSH Rules in place, Andhra Pradesh becomes one of the few States to have completed the state-level rule-making exercise under all four labour codes, following the earlier notification of the Code on Social Security (Andhra Pradesh) Rules, 2026 reported in the July 2026 edition of this newsletter.

The AP OSH Rules operate in supersession of the rules previously in force in the State under eight central enactments repealed on the coming into force of the OSHWC Code, namely the Factories Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Motor Transport Workers Act, 1961, the Plantation Labour Act, 1951 and the Dock Workers (Safety, Health and Welfare) Act, 1986. The Rules require specified establishments to constitute a Safety Committee meeting at least once every quarter, prescribe qualification and experience requirements for Safety Officers and Medical Officers, and enable the State Government to formulate a scheme for empanelment of experts for third-party audit and compliance certification. The Rules must be read together with the Occupational Safety, Health and Working Conditions (Central) Rules, 2026 notified on May 8, 2026.

Establishments operating in Andhra Pradesh across the sectors previously governed by the superseded enactments, including factories, construction sites, plantations, dock installations and establishments engaging contract labour or interstate migrant workers, should undertake a comprehensive review of their existing registrations, licences and statutory registers, verify whether fresh registration, migration of existing registration or continuation under a saving provision applies, and update Safety Committee constitution, Safety Officer appointments and welfare amenity provisions to align with the AP OSH Rules on priority.

Government of Uttar Pradesh notifies the Uttar Pradesh Code on Wages Rules, 2026 and the Occupational Safety, Health and Working Conditions (Uttar Pradesh) Rules, 2026

The Government of Uttar Pradesh, Department of Labour, Section-3, has, through Notification No. 1377/XXXVI-03-2026-1901341 dated August 12, 2026, notified the Uttar Pradesh Code on Wages Rules, 2026 ("**UP Wages Rules**") under Section 67(1) of the Code on Wages, 2019, in supersession of the earlier State rules framed under the Minimum Wages Act, 1948, the Payment of Wages Act, 1936 and the Payment of Bonus Act, 1965. Separately, through Notification No. 962/XXXVI-03-2026-1903305 dated August 27, 2026, the Department notified the Occupational Safety, Health and Working Conditions (Uttar Pradesh) Rules, 2026 ("**UP OSH** Rules") under Sections 133 and 135 of the OSHWC Code. Both sets of Rules have been published in the Uttar Pradesh Gazette (Extraordinary). It should be noted that the Code on Social Security (Uttar Pradesh) Rules, 2026 have since been finally notified on August 27, 2026, while the Industrial Relations (Uttar Pradesh) Rules, 2026 remain at the draft or consultation stage.

The UP Wages Rules set out the machinery for minimum wage fixation, wage board consultations, the form and content of wage slips and wage registers, and the procedure for inspection and enforcement of wage payment obligations across the State. The UP OSH Rules operationalise the registration, licensing, working hours, welfare amenity and safety compliance provisions of the OSHWC Code for establishments in the State falling outside the central sphere. Both sets of Rules follow earlier draft versions published for public comment.

Establishments operating in Uttar Pradesh should review their existing registrations, wage computation practices, welfare arrangements and safety compliance processes against the specific requirements of the UP Wages Rules and the UP OSH Rules, since these Rules now govern day to day compliance in the State for establishments outside the central sphere. Employers should also confirm the applicable rule set for any multi-State operation, since an establishment may fall within the central sphere for some purposes and the State sphere for others, and should continue to track the pending Social Security and Industrial Relations Rules for the State separately.

Government of Bihar notifies a risk-based inspection scheme under the labour codes

The Government of Bihar, Labour Resources and Migrant Workers Welfare Department, has, through S.O. 196 dated August 14, 2026 ("**Inspection Scheme**"), notified a risk based inspection scheme applicable across establishments covered under the Code on Wages, 2019, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, issued respectively under Section 51(2) and (3) of the Code on Wages, Section 122(2) to (4) of the Code on Social Security and Section 34(3) and (4) of the OSHWC Code. The Inspection Scheme forms part of the digital compliance architecture contemplated under the labour codes and departs from the discretionary inspection regime that operated under the erstwhile labour statutes in the State.

Under the Inspection Scheme, establishments are selected for inspection through a combination of computerised risk assessment and random selection from a combined database of establishments registered under the repealed enactments and the labour codes. Establishments are classified as high, medium or low risk by reference to criteria including whether the industry is hazardous or non-hazardous, the number of workers engaged, the compliance and accident history of the establishment and complaints received, with the classification made available on the compliance portal. Low risk establishments are subject to self-certification, medium risk establishments to third-party certification, and only high-risk establishments to physical inspection by the Inspector-cum-Facilitator. A serious accident or occupational disease automatically elevates an establishment to high risk with mandatory inspection within thirty days, while three consecutive compliant inspections move an establishment to a green channel with reduced inspection frequency.

The Inspection Scheme builds in procedural safeguards for employers. Monthly inspection lists are communicated to the concerned employer and officers 72 hours in advance by email or through the portal, and unannounced inspections are permitted only for high-risk units and subject to the prior approval of the Labour Commissioner. Complaint based inspections likewise require the Labour Commissioner's prior permission, with the complainant's identity never disclosed to the employer. No inspector may conduct a solo inspection without the Labour Commissioner's permission, no inspector may inspect the same unit twice in a row, and inspectors must declare that they have no financial interest in the establishment allotted to them. A joint inspection model allows a single visit by a team comprising the Labour Superintendent, the Factory Inspector, the Labour Enforcement Officer and, where applicable, the Boiler Inspector, to cover compliance under all applicable labour laws in one visit. Inspection reports are required to be uploaded within 24 hours, with an online right of appeal to the Labour Commissioner.

Establishments operating in Bihar should familiarise themselves with the risk classification methodology, undertake an internal assessment of the factors, including compliance history and accident record, likely to influence their classification, and ensure that registration particulars on the compliance portal are current, so that inspection lists and notices are correctly routed. Site level personnel should be trained on the procedure to be followed on receipt of an inspection notice, including the ability to view and download inspection reports and to pursue an appeal where required.

Government of Tamil Nadu renews permission for shops and commercial establishments to remain open on all days of the year

The Government of Tamil Nadu, Labour Welfare and Skill Development Department, has, through Notification No. II(2)/LWSD/652(a)/2026 (G.O. Rt. No. 231), issued and effective from August 24, 2026, renewed its standing permission for all shops and commercial establishments in the State to remain open on all 365 days of the year, subject to the conditions ordinarily attached to such permission, including compliance with weekly rest and overtime entitlements for employees under the applicable wage and working hours framework.

Establishments operating in Tamil Nadu that rely on this permission to maintain continuous operations should confirm that their internal rostering practices continue to provide the compensatory weekly rest and other entitlements that remain a condition of the permission, notwithstanding the general freedom to remain open every day of the year. Employers should retain the renewed notification on file for production during inspection, since the permission operates for a defined period and requires periodic renewal.

Government of Bihar notifies a risk-based classification scheme for establishments under the Occupational Safety, Health and Working Conditions Code, 2020

The Government of Bihar, Labour Resources and Migrant Workers Welfare Department, has, through S.O. 203 signed on August 27, 2026, and published in the Bihar Gazette (Extraordinary) on August 31, 2026 ("Classification Scheme"), notified the Bihar Risk Based Classification of Establishments (OSH&WC) Scheme, 2026, applicable to establishments covered under the OSHWC Code. The Classification Scheme follows closely on the risk-based inspection scheme notified by the State under S.O. 196 dated August 14, 2026, discussed above, and sets out the detailed criteria by which establishments are to be classified as high, medium or low risk for the purposes of that inspection scheme.

The notification of the Classification Scheme confirms that Bihar continues to build out the compliance architecture under the labour codes at a pace faster than most other States. Establishments operating in Bihar should read the Classification Scheme together with the risk based inspection scheme already reported, ascertain the specific criteria, weightage and documentation requirements applicable to the risk classification exercise, and confirm that their registration and compliance history on the Bihar labour compliance portal is complete and accurate, since this history will bear directly on the classification exercise contemplated under the Scheme.

Employees' State Insurance Corporation decentralises revenue recovery functions to the branch office level

The Director General, Employees' State Insurance Corporation ("**ESIC**"), has approved shifting Revenue Recovery Offices from Regional and Sub Regional Offices to the Branch Office level, with a view to ensuring that recovery certificates issued by Authorised Officers are executed and closed within defined timelines, while making Branch Offices accountable for faster disposal of claims filed by insured persons. Regional Directors and Sub Regional Office in-charges have been directed to identify, preferably one per district, the Branch Office carrying the highest quantum of recovery dues and pending certificates, and to post a dedicated Recovery Officer at that office, functioning as Recovery Officer-cum-Branch Manager with a specific mandate to also expedite decisions on claims filed by insured persons. The Social Security Officer, that is, the Inspector-cum-Facilitator, at such Branch Offices will additionally function as Recovery Inspector, and Recovery Officers currently posted at the Regional or Sub-Regional Office level will transition to a coordinating role.

For employers, this administrative reorganisation means that recovery proceedings in respect of dues that have reached the certificate stage under Section 45C of the Employees' State Insurance Act, 1948 are likely to be pursued from the district Branch Office with which the employer already interacts for routine compliance, and that older demands pending at the Regional or Sub-Regional Office level are likely to be revived and pursued with renewed urgency, given the throughput benchmark set for each Recovery Officer. Employers should review all outstanding ESIC demand notices, assessment orders issued under Section 45A and recovery certificates issued against the establishment, regularise undisputed dues, and ensure that disputed amounts are formally challenged through the applicable statutory remedy, including an appeal under Section 45AA against an order under Section 45A within the prescribed 60-day period, or proceedings before the Employees' Insurance Court, as the circumstances may require, rather than being left as an unanswered demand that may now be pursued more actively at the district level.

Government of Karnataka brings into force the Karnataka Shops and Commercial Establishments (Amendment) Act, 2026

The Karnataka Shops and Commercial Establishments (Amendment) Act, 2026 ("**Amendment Act**"), amending the Karnataka Shops and Commercial Establishments Act, 1961 ("**Parent Act**"), received the assent of the Governor on September 3, 2026, was published in the Official Gazette as Karnataka Act No. 38 of 2026 vide Notification No. DPAL 32 SHASANA 2026 dated September 4, 2026, and has come into force with immediate effect. The Amendment Act introduces significant changes to the registration framework, employer obligations, statutory cross references, and the penalty and appeal structure under the Parent Act and separately omits a set of specific safeguards that had applied to women employees on night duty.

On registration, the Amendment Act inserts a new exemption under which establishments employing 10 or more workers that are already registered under the OSHWC Code stand excluded from the applicability of the Parent Act and dispenses with the requirement of separate registration for godowns and storage facilities situated within one hundred metres of the principal establishment. Registration, its issuance and the payment of fees are moved to electronic mode, the timeline for an Inspector to communicate reasons for refusing an application is reduced from 30 days to 7 days, with deemed registration if no communication is received, and registration, once granted, no longer requires periodic renewal. The imprisonment previously prescribed for falsely claiming the benefit of deemed registration has been substituted with a monetary fine extending up to Rs. 50,000.

The Amendment Act introduces two new employer obligations: a service certificate must be issued to an employee within 7 days of an application in the prescribed form, and employers are barred from retaining an employee's original educational or experience certificates, or any other original document, at appointment or during employment. Both obligations carry penal consequences. The Amendment Act also substitutes the reference to the Payment of Wages Act, 1936 with the Code on Wages, 2019, and the reference to the Workmen's Compensation Act, 1923 with the Code on Social Security, 2020, for extending the timely payment and compensation frameworks under the codes to shop and establishment employees. It further introduces, for the first time, a structured compounding mechanism, under which the jurisdictional Labour Officer may compound an offence on payment of fifty per cent of the prescribed fine for a first offence and 75 per cent for a subsequent offence, subject to a bar on compounding an offence of the same nature more than twice in a year, together with a right of appeal against a compounding order within 30 days before an Assistant Labour Commissioner or above, subject to prior deposit of the fine.

Separately, the Amendment Act omits clauses 25(1)(h) to 25(1)(o) of the Parent Act, which had prescribed detailed transport safeguards for women employees on night duty, including mandatory verification and background screening of drivers, fixed and authorised pick-up and drop routes, a requirement against a woman employee being the first to be picked up or the last to be dropped, random checking of night-shift vehicles, and the maintenance of a control room to monitor vehicle movement in real time. The Karnataka State IT/ITeS Employees Union has publicly opposed the removal of these safeguards, pointing to the large proportion of women employed on night shifts in the State's information technology and information technology enabled services sector, and has called for their restoration. The statutory framework governing prevention of sexual harassment at the workplace, including the constitution of an Internal Committee under the applicable law, and the more general safety obligations under the OSHWC Code and its Karnataka rules, are not affected by this omission.

Establishments operating in Karnataka should assess whether their existing OSHWC Code registration now takes them outside the applicability of the Parent Act and document the position taken for record purposes. Employers should audit personnel files and return any original certificates currently retained, put in place a seven day turnaround process for service certificate requests, and review night shift standard operating procedures for women employees in light of the omission of clauses 25(1)(h) to 25(1)(o), deciding whether to retain measures such as driver verification and defined pick-up and drop routes as a matter of internal policy even though they are no longer separately mandated. Given the public scrutiny attracted by this change and its immediate effect, this exercise should be undertaken on priority.

Government of Bihar establishes a Worker Re-Skilling Fund under the Industrial Relations Code, 2020

The Governor of Bihar has, in exercise of the powers conferred under Section 83(1) of the Industrial Relations Code, 2020 ("**IR Code**"), notified, vide S.O. 210 dated September 3, 2026, the establishment of a fund to be known as the Worker Re-Skilling Fund, for the purposes contemplated under the IR Code. Section 83 of the IR Code contemplates a fund to which employers contribute for the re-skilling of retrenched workers, so as to enable them to secure alternative employment, and sub-section (1) empowers the appropriate Government to establish such a fund by notification. On the same date, the State also notified, under S.O. 206 and S.O. 208 respectively, a Social Security Fund under Section 115 of the OSHWC Code and a Social Security Fund under Section 141 of the Code on Social Security, 2020.

These notifications are, at this stage, foundational or enabling measures. They establish the respective funds but do not, in themselves, prescribe the rate or mechanism of employer contribution, the authority responsible for administration, or the rules governing disbursement to, and eligibility of, beneficiaries. Employers with establishments in Bihar that are covered under the IR Code, the OSHWC Code and the Code on Social Security should watch for follow up notifications or rules that are expected to operationalise the contribution and disbursement mechanics contemplated under these provisions. The notifications follow closely on the heels of the risk-based inspection and classification schemes notified by the State in August 2026 and reflect the continuing pace at which Bihar is building out the implementation architecture of the four labour codes.

Employees' State Insurance Corporation directs a coverage awareness campaign for mine workers

The ESIC Headquarters has, through Circular F. No. E-13/14/08/2026-PR dated September 3, 2026, directed all Regional and Sub-Regional Offices to undertake a sustained outreach campaign to inform mine workers of their coverage under the Employees' State Insurance Scheme.

Establishments operating mines or connected operations that fall within the coverage of the Scheme should anticipate greater awareness among their workforce of entitlements under the Scheme, and should ensure that their registration, contribution and record keeping obligations in respect of covered mine workers are in order, so as to respond to an increase in employee queries or claims following this outreach campaign.

Employees' Provident Fund Organisation issues operational guidelines for employers under the VISHWAS, 2026 settlement scheme

The Employees' Provident Fund Organisation ("**EPFO**") has issued detailed operational guidelines to its Zonal, Regional and District Offices for implementation of the VISHWAS, 2026 scheme, a onetime settlement scheme for pending disputes relating to damages levied under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or the corresponding provision of the Code on Social Security, 2020. The scheme itself was notified vide G.S.R. 525(E) dated June 29, 2026, and became operational from that date, with the present operational guidelines issued in the first week of September 2026 to standardise implementation across field offices.

Under the scheme, damages for defaults relating to periods prior to June 14, 2024, are recalculated at substantially reduced rates of 0.25 per cent per month for defaults of up to 2 months, 0.50 per cent per month for defaults exceeding 2 months, and one per cent per month for defaults exceeding four months, in place of the higher rates otherwise prescribed. The scheme requires an employer to first clear the full interest due under Section 7Q of the 1952 Act or the corresponding provision of the Code on Social Security, 2020, before the concessional damages rate can be availed, and does not waive the underlying contribution or interest component. Applications are made electronically through the EPFO employer portal using a digital signature certificate or e-sign, and the scheme covers cases pending before a court or tribunal, cases where a penalty order has been passed but not recovered, and cases at the show-cause notice stage. The scheme remains open for six months from notification, presently understood to close on December 28, 2026, and EPFO has indicated that this window will not be extended.

Establishments with pending or contemplated provident fund damages proceedings should evaluate, on priority, whether their case falls within the scope of the VISHWAS, 2026 scheme, and should factor the requirement to first discharge outstanding interest into their settlement planning. Given the fixed and non-extendable window, employers should engage with the relevant EPFO field office at an early stage to confirm eligibility and the applicable concessional rate for their specific default period.

Ministry of Labour and Employment amends the pattern of investment applicable to provident fund trusts

The Ministry of Labour and Employment has, through Notification S.O. 5009(E) dated September 9, 2026, amended the pattern of investment applicable to exempted provident fund trustees under the earlier notification S.O. 1433(E) dated May 29, 2015, issued under Section 17(3)(a) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The amendment introduces a requirement that rupee denominated bonds issued by international financial institutions or multilateral development banks, in which provident fund trusts invest, must carry a minimum residual maturity of 3 years at the time of investment.

This development is chiefly relevant to establishments that maintain an exempted provident fund trust and make investment decisions on behalf of such a trust, whether directly or through appointed fund managers, since trustees are required to invest trust monies in accordance with the pattern of investment prescribed by the Government. Trustees and fund managers responsible for exempted provident fund trusts should review their existing and proposed holdings of such bonds against the new 3 year minimum maturity requirement and adjust their investment approach to remain compliant with the amended pattern of investment.

Employees' State Insurance Corporation introduces real-time automated SMS alerts for insured persons on the status of their claims

The Employees' State Insurance Corporation has, through a circular bearing file number N-16016/1/2023-BFT-II dated September 8, 2026, introduced a system of real-time, automated SMS alerts to insured persons on the status of claims filed by them under the Employees' State Insurance Scheme, covering submission, rejection and approval of claims.

This development does not, by itself, impose any fresh compliance obligation on employers, but is likely to increase the volume of queries raised by insured employees on the status of pending claims, given the greater visibility that the automated alerts will provide. Employers with a significant insured workforce, particularly those handling claims through payroll or human resources teams as a matter of practice, should ensure that the relevant teams are prepared to field an increased volume of employee queries, and should familiarise themselves with the current status of any pending claims raised by their employees so as to respond accurately.

Case Laws

Supreme Court's nine-judge Bench divides 4-4-1 on reformulating the "triple test" for the meaning of "industry" under the Industrial Disputes Act, 1947, while confining any change to future cases

In State of U.P. v. Jai Bir Singh, Civil Appeal No. 897 of 2002 and connected matters (Supreme Court, August 20, 2026), a 9 judge Constitution Bench comprising Chief Justice Surya Kant and Justices B.V. Nagarathna, P.S. Narasimha, Dipankar Datta, Ujjal Bhuyan, Satish Chandra Sharma, Joymalya Bagchi, Alok Aradhe and Vipul M. Pancholi, has considered whether the "triple test" laid down by a 7 judge Bench in Bangalore Water Supply and Sewerage Board v. A. Rajappa (1978) requires reformulation. The Bench divided 4-4-1, and no single formulation of the test attracted the support of a clear majority of five judges.

The reference traced its origin to a batch of appeals arising from disputes raised by daily wagers employed in a tree planting welfare scheme run by the Social Forestry Department of Uttar Pradesh. A 5 judge Bench doubted the correctness of the 1978 ruling in 2005 and referred the matter for reconsideration by a larger Bench, and in January 2017 a 7 judge Bench directed that the reference be placed before a Bench of 9 judges. The 9 judge Bench heard arguments over three days in March 2026 and reserved judgment.

The 1978 ruling had held that an establishment qualifies as an "industry" where there is systematic activity, cooperation between employer and employee, and production or distribution of goods or services intended to satisfy human wants, regardless of whether the activity is carried on for profit. Chief Justice Surya Kant, writing for himself and Justices Satish Chandra Sharma, Alok Aradhe and Vipul M. Pancholi, proposed that the third limb of the test be reformulated to require that the goods or services in question bear a "discernible commercial character", so as to exclude activity with no resemblance to trade or business. Justices Nagarathna, Datta, Bhuyan and Bagchi, in separate opinions, declined to join this reformulation, holding variously that the 1978 test remained sound and that reopening a settled definition risked introducing confusion into pending litigation. Justice Narasimha authored a further separate opinion that did not align fully with either the plurality favouring reformulation or the four judges opposing it, and instead emphasised that the meaning of "industry" under Section 2(p) of the Industrial Relations Code, 2020 must be construed independently and without reference to either the 1978 ruling or the present judgment.

Despite this division, the Court was unanimous on three points that will govern the practical application of the judgment. First, every dispute presently pending before a court, tribunal or labour authority under the Industrial Disputes Act, 1947 will continue to be adjudicated under the 1978 triple test. Second, matters that have already attained finality, whether by judgment, settlement or otherwise, will not be reopened. Third, the meaning of "industry" under Section 2(p) of the Industrial Relations Code, 2020, which repealed the 1947 Act with effect from November 21, 2025, was not before the Court and remains to be authoritatively determined in a future case arising under the Code.

The decision is of considerable significance for employers with pending industrial disputes and for those assessing their exposure under the Industrial Relations Code, 2020 going forward. Employers with matters currently before a labour court, industrial tribunal or the National Industrial Tribunal that turn on whether the establishment is an "industry" should proceed on the basis that the 1978 test continues to apply and need not revisit strategy on account of the present ruling. At the same time, employers seeking to assess whether an establishment without a commercial character, such as a charitable, religious, educational or welfare body, falls within the definition of "industry" under Section 2(p) of the Industrial Relations Code, 2020 for disputes arising after November 21, 2025, should note that this question remains open. Given that no single formulation commanded majority support, neither the 1978 test nor the plurality's proposed reformulation can be treated as binding on the interpretation of the Code, and employers in this category would be well advised to review the express statutory exclusions already written into Section 2(p), including those for institutions run by charitable organisations, domestic service and activities connected with the sovereign functions of government, rather than relying on either judgment as a complete answer.

Supreme Court holds that an employee who has accepted the benefits of resignation cannot later challenge a technical defect in its acceptance

In Delhi Technological University v. B.S. Rawat, Civil Appeal No. 9308 of 2024 (with connected matters), 2026 INSC 797, decided on August 4, 2026, the Supreme Court, comprising Justice Pamidighantam Sri Narasimha and Justice Alok Aradhe, has held that an employee who has acted upon and accepted the consequential benefits flowing from his own resignation cannot subsequently found a challenge on a technical infirmity in the authority that accepted the resignation, particularly where that infirmity stands cured through ratification by the competent authority.

The respondent, working as Assistant Registrar (Legal) at Delhi Technological University, resigned on May 19, 2016, requesting a waiver of the notice period. The resignation was accepted on May 25, 2016 by a Professor holding additional charge as Vice-Chancellor, although the power to deal with administrative personnel vested, under Section 23(2)(ix) of the Delhi Technological University Act, 2009, in the Board of Management. The respondent was relieved on May 31, 2016 and accepted his relieving order, no-dues certificate, last pay certificate and experience certificate without demur, before joining the National Institute of Technology, Calicut. Only on September 22, 2016 did he seek to withdraw his resignation, contending that its acceptance was void for want of authority. The Board of Management ratified the earlier acceptance at its meeting on September 26, 2016, following which his request for withdrawal was rejected.

The Supreme Court held that a ratified act is deemed valid from the date of the original unauthorised act and not merely from the date of ratification, so that the Board's ratification on September 26, 2016 related back to May 25, 2016, the date of original acceptance. On that footing, there was no subsisting resignation left for the respondent to withdraw when he purported to do so on September 22, 2016, since his employment had already validly ended nearly four months earlier. The Court invoked the principle against approbation and reprobation, holding that an employee who has treated his resignation as final, accepted his relieving documentation, and used the resignation as the basis for securing fresh employment, cannot thereafter resile from that position on a technical challenge to the mode of acceptance. The Court allowed the University's appeal, set aside the direction for reinstatement, and dismissed the respondent's connected claims.

Employers should ensure that resignations are accepted by the officer or authority designated under the applicable service rules or statute, and where doubt subsequently arises as to the competence of the accepting authority, should place the matter before the properly constituted authority for ratification at the earliest opportunity. An employee's own conduct in accepting and acting upon the consequences of a resignation, including relieving documentation and subsequent employment elsewhere, will weigh heavily against any later attempt to treat the resignation as void, and employers facing a belated challenge would do well to place such conduct on record.

Supreme Court holds that the 'washed off' theory has no application while assessing an employee's fitness for continued retention in service

In Sushil Sharma v. Union of India and Others, Civil Appeal, 2026 INSC 809 (Supreme Court, August 6, 2026), the Supreme Court, comprising Justice Prashant Kumar Mishra and Justice Shree Chandrashekhar, has held that the washed-off theory, under which adverse entries in an employee's service record are treated as having ceased to have effect once the employee has subsequently been promoted, has no application while an employer is assessing whether an employee is fit to be retained in service. The decision arose from a challenge to the compulsory retirement of a former Central Industrial Security Force employee, who contended that his compulsory retirement could not be founded on adverse entries predating his later promotions.

The Court explained that the washed-off theory, to the extent recognised, operates in the limited context of promotion, where adverse entries relating to a period prior to promotion are ordinarily not held against an employee when a subsequent promotion is under consideration, on the rationale that the promotion itself reflects a contemporaneous assessment of suitability. This rationale does not extend to the distinct exercise of assessing continued suitability for retention, where the employer is entitled, and expected, to have regard to the entirety of the employee's service record. The Court accordingly upheld the compulsory retirement, rejecting the contention that only the post-promotion record could be examined.

Employers, particularly in the public sector and other establishments undertaking periodic review of an employee's suitability for continued retention pursuant to service rules or standing instructions, should ensure that such review is conducted with reference to the complete service record, including periods preceding a subsequent promotion, and should not assume that earlier adverse entries stand automatically neutralised by an intervening promotion. The decision does not disturb the narrower and well settled application of the washed-off theory in promotion decisions themselves, and the distinction between the two contexts should be kept in view when framing internal review policies.

Supreme Court sets aside dismissal for suppression of criminal antecedents on the finding that the employee genuinely did not know of the case against him

In Shatrughn Yadav v. Fertilizers and Chemicals Travancore Ltd. (FACT) and Others, 2026 SCC OnLine SC 1537 (Supreme Court, August 11, 2026), the Supreme Court, comprising Justice Sanjay Karol and Justice Augustine George Masih, has set aside the termination of a Technician (Process) employed with FACT, who had been dismissed after his employer discovered a criminal case pending against him that he had not disclosed at the time of his appointment.

Applying the two pronged enquiry laid down in Avtar Singh v. Union of India, (2016) 8 SCC 471, the Court held that an employer considering termination on this ground must first determine whether there was, in fact, any suppression or furnishing of false information, having regard to the candidate's knowledge at the relevant time, and only if that threshold is crossed should it go on to assess whether the nature of the antecedent and the surrounding circumstances warrant termination. On the facts, the Court found that the appellant had never been summoned, arrested or charge-sheeted in connection with the case relied upon by FACT, and that he therefore did not, as a matter of fact, know of the case against him at the time he made his declaration. Since there is no suppression where the employee has no knowledge of the antecedent in question, the first limb of the Avtar Singh test was not satisfied, and the termination could not be sustained on the ground of suppression at all.

The decision is a reminder that termination is not an automatic consequence of the subsequent discovery of a criminal antecedent, and that an employer must undertake a genuine, fact specific enquiry into the employee's actual knowledge before treating a non disclosure as a suppression. This has direct relevance for employers, particularly those engaging employees in positions of trust, security sensitive roles or public sector undertakings, where declaration of criminal antecedents forms part of the appointment process. Before acting on an undisclosed antecedent, employers should first establish, through documentary or other reliable material, that the employee was in fact aware of the proceeding at the relevant time, whether through a summons, an arrest, a charge-sheet or similar process, since an employee who was never brought into the criminal process in any of these ways cannot be said to have suppressed information he did not possess. Only once actual knowledge is established should the employer proceed to the second stage of assessing whether the nature of the antecedent renders continued employment untenable, and internal policies on declaration of antecedents should be reviewed to build in this two-stage enquiry.

Supreme Court holds that unadjudicated interest and damages claims under the EPF Act need not be provided for in a resolution plan under the Insolvency and Bankruptcy Code, 2016

In Employees' Provident Fund Organisation v. Rachna Jhunjhunwala and Another, Civil Appeal No. 9768 of 2026 (Supreme Court, July 2026), the Supreme Court, comprising Justice Manoj Misra and Justice Vijay Bishnoi, has held that unadjudicated claims for interest under Section 7Q and damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, not determined prior to the commencement of the corporate insolvency resolution process, need not be provided for in a resolution plan approved under the Insolvency and Bankruptcy Code, 2016.

The Court dismissed an appeal filed by the EPFO challenging a decision of the National Company Law Appellate Tribunal, which had upheld approval of a resolution plan excluding the Organisation's claims towards interest and damages on the ground that these had not been crystallised through adjudication as on the insolvency commencement date. While reaffirming that provident fund dues in the nature of the principal contribution retain their protected character and priority under the Insolvency and Bankruptcy Code, the Court drew a clear distinction for ancillary claims for interest and damages that remain unadjudicated, holding that such claims, not having crystallised into a determined liability before the commencement of the insolvency process, are not required to be factored into the resolution plan.

Provident fund authorities, resolution professionals and committees of creditors dealing with corporate debtors that have pending or contemplated proceedings for levy of damages or interest under Sections 7Q and 14B of the 1952 Act should ascertain, at the earliest stage, whether such proceedings have reached formal adjudication, since claims still at a pre-adjudication stage as on the insolvency commencement date are liable to be excluded from the resolution plan on the present ruling. The EPFO and similarly placed statutory authorities would be well advised to pursue outstanding damages and interest proceedings to a stage of formal adjudication without delay, so as to preserve their position in the event of subsequent insolvency proceedings against the employer.

Karnataka High Court holds that a writ petition does not ordinarily lie against a trade union to restrain a proposed strike under the Industrial Relations Code, 2020

In *Bosch Automotive Electronics India Pvt. Ltd. v. Addl. Labour Commissioner and Another*, Writ Petition No. 8044 of 2026 (Karnataka High Court, August 2026), the Karnataka High Court, per Justice Anant Ramanath Hegde, has held that a writ petition under Article 226 of the Constitution does not ordinarily lie against a workers' trade union to restrain a proposed strike, since a trade union does not qualify as the State or an instrumentality of the State and is not amenable to the writ jurisdiction merely because the proposed strike would, if it proceeded, violate the statutory prohibition on strikes contained in the Industrial Relations Code, 2020.

The petitioner company had approached the High Court seeking to restrain a strike notice issued by its Automotive Electronics Employees Union, contending that the proposed strike violated the prohibition in Section 62(1)(d) of the Industrial Relations Code, 2020, and that a strike commenced in violation of that prohibition would be illegal under Section 63 of the Code. The Court held that the Union did not discharge any public duty or public function, was neither the State nor an instrumentality or agency of the State, and was not a body substantially funded by the State or required by any statute to discharge a public function. The mere fact that the petitioner alleged a violation of the statutory provisions governing strikes could not, by itself, be equated with an allegation that the Union was discharging a public duty amenable to the writ jurisdiction, and the Court dismissed the writ petition on this ground, without expressing any view on the merits of whether the proposed strike in fact violated the statutory prohibition.

The Court clarified that an employer aggrieved by a strike notice said to violate the statutory prohibition on strikes during conciliation proceedings under the Industrial Relations Code, 2020 is not left without a remedy, and may instead approach the Industrial Tribunal constituted under the Code, which is the forum contemplated for resolution of such disputes. The decision therefore does not diminish the substantive protection available to employers against strikes called in violation of the Code, but confines the choice of forum to the machinery created under the Code rather than the writ jurisdiction directed against the union as a private body.

Employers apprehending a strike believed to violate the statutory prohibition under Section 62 of the Code should, in light of this ruling, direct their initial recourse to the Industrial Tribunal rather than to a writ petition against the concerned trade union, reserving writ remedies for cases involving action or inaction on the part of a genuinely public authority, such as the appropriate Government or a conciliation officer, in the discharge of functions under the Code. Employers should also update internal escalation protocols for anticipated industrial action to reflect the forum clarified by this decision, so as to avoid delay in seeking appropriate relief.

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