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Editorial

RENEWED ATTACK ON PSBS

The recent budget presented in the Parliament took the entire country by shock. The very Parliament which has made legislation to nationalize banks, heard the intent of the Government about privitizing nationalized banks, a critical component on Indian Financial System. Budget also indicated about disinvestment of equity in one of the Public Sector Banks. This is renewed attack on Public Sector Banks. The Government has systematically initiated several steps as per the recommendations of Mr. Narasimham Committee. This Committee had suggested for the regrouping of the 28 Public Sector Banks into smaller number. At present there are 10 Public Sector Banks with the merger of several banks. This was the move resulted in reduced number of branches and curtail in the job opportunities. The United Forum of Bank Unions have been fighting against these ill advised moves of the Government with the objective of handing over wealth of the nation to private business corporates in the garb of efficiency. The Government's stand that it should not run business is outrageous and diagonally opposite to the Welfare State concept and a indifferent thinking on its part to disown its own institutions which have built the Nation.

The Public Sector Banks have rendered yeomen service in meeting all the expectations at government in ensuring the credit flow to preferred sector. It has also taken the benefit of the massive service provided by the Public Sector Banks for the purpose ensuring the overall economic growth of the country. The Government is fully aware of the contributions made by the Public Sector Units in particular the banks towards the growth of the economy in the country. Banks have implemented all socio-economic programs undertaken by the Central Government from time to time. During the last 50 years, ever since the Banks were completely taken over by the Government, they have ensured the rapid spread of the banking habits amongst the people in all parts of the country. The branch expansion was at quick and the Public Sector Bank branches were opened not only in the urban areas but also to far flung rural areas where even the basic necessities were not available. It helped the Government in ensuring socio economic advancement of the people living not only in the interior parts of the country but the most difficult centers of different states in the country. Does Government not know that private banks will not do this?

The growth of the Public Sector banks was evenly placed throughout the country. It generated a lot of employment opportunities through lending to the weaker sections of the society in particular the backward areas where the communication and transport were even absent. The Public Sector Banks also generated employment

opportunity to the millions and millions of educated people. There are nearly one million employees working in the banking industry.

Needless to say that the Governments have been pursuing a misplaced path of reforms. Government is trying to ape the western countries ignoring the ground realities of poverty, huge population, disguised employment, large number of populace below poverty line or around that, level of education, employment, lack of resources, influence of rich over the Government and the banking institutions, skewed distribution of wealth etc. Western countries do not have any of these issues. In our country, still credit is scarce commodity. But for PSBs, none of the economically, socially downtrodden would not have got credit facilities.. Density of banking can never be compared to western countries.

It is fact that Governments are under the influence of IMF and World Bank to open up the economy. IMF & World Bank are in turn under the grip of developed countries, which are forcing our country to open every sector to private players so that they can exploit the resource of the country. Banking and Financial Institution sector is a low hanging fruit. Government has succumbed to their pressure and has resorted to reckless opening of economy hurting the common man and the farmers of the country. Privitisation of Banks is a part of the design.

Privitisation of PSBs and disinvestment is nothing short of shrugging the responsibility of a Welfare State. Mind set of Government needs to be observed. On the one hand, they want to reduce number of PSBs (by M&A and privitisation). On the other hand, RBI is giving on the tap licence. From this it is discernible that Government wants banks, but not PSBs!!

The Privatization of the Public Sector Banks is very sensitive issue. The UFBU has been constantly opposing the Privatization of the Public Sector Units by joining the Central Trade Unions as well as other Associations and Federation in the country. The present move is a dangerous and it may be a design by the Government to eventually to privatize the Public Sector Banks which will prove disastrous to county's economic and financial independence. It is in this background, the United Forum of Bank Unions has launched struggle against these initiatives including two days strike on 15th & 16th March. There is a need to build a strong public opinion about this disastrous approach of the Government and insist for mass participation in the struggle launched by the United Forum of Bank Unions.

Consolidation among PSBs since 2008

Year	Consolidation
2008	State Bank of India (SBI) acquires associate bank State Bank of Saurashtra
2010	SBI acquires associate bank State bank of Indore
2017	SBI acquires five associate bank
	State Bank of Bikaner & Jaipur * State Bank of Hyderabad
	State Bank of Mysore * State Bank of Patiala
	State Bank of Travancore *SBI also acquired Bharatiya Mahila Bank
2019	Dena Bank and Vijaya Bank merged with Bank of Baroda
2020	Oriental Bank of Commerce and United Bank of India merged with Punjab National Bank
	Syndicate Bank merged with Canara Bank
	Andhra Bank and Corporation Bank merged with Union Bank of India
	Allahabad Bank merged with Indian Bank

PSBs that were not part of the mega consolidation in 2020

* Bank of India * Bank of Maharashtra * Punjab & Sind Bank
* Central Bank of India * Indian Overseas Bank * UCO Bank

TO SEEK A FAVOUR IS TO BARTER AWAY ONE'S FREEDOM

GOVERNMENT CLOSES TRIPARTITE DISCUSSION ON LABOUR CODE RULES

The Union government on 20.01.2021 completed the tripartite consultations to finalize the labour code rules despite trade union resistance, giving a week's time to all stakeholders to submit any feedback in writing.

Trade unions across parties have opposed several provisions in the codes, including fixed –term employment, keeping smaller firms out of the purview of contract labour rules, and differential working hours for formal and informal workers. Employers' groups favoured the reform steps, including reduced compliance, single registration system for labour law compliance, and promotion of fixed –term jobs. The employers' representatives, however, have sought clarity on grievance redressal and statutory deduction to calculate social security provisions.

"The labour codes have many progressive steps in sync with present –day requirements. The fixed –term employment provision is a welcome step. This is the third round of tripartite consultations on labour code rules. Some trade unions did not participate earlier, this time, it was a face –to – face meeting and all were there," said Ramakant Bhardwaj, vice president of Laghu Udyog Bharti, a micro and small enterprises network.

During the meeting attended by Bharadwaj on 21/01/21 Union Labour ministry said any further feedback or suggestions can be shared only till 27th January.

A labour ministry spokesperson said the government is not issuing any formal statement as yet on the meeting. Last week, Labour Secretary Apurva Chandra had said that the rules will be finalized by 31st January.

Bharatiya Mazdoor Sangh, a Central Trade Union, asked the ministry to bring contract workers in smaller companies under the purview of the Labour Codes. The government has proposed to exempt firms having less than 50 workers from this rule. "BMS strongly objected to the exclusion of contract labour from the purview of Labour Codes up to 50 workers and said the Codes should provide for their protection," said the union affiliated to Rashtriya Swayamsevak Sangh, the ideological parent of ruling Bhartatiya Janata Party.■

Source: MINT, Dated: 21.01.2021

PETITION IN SUPREME COURT SEEKS GUIDELINES FOR ELECTRONIC MEDIA

The Supreme Court has decided to examine a petition seeking the framing of guidelines outlining the broad regulatory paradigm within which the right to free speech of broadcasters and electronic media can be judicially regulated.

The plea filed by Pune residents Nilesh Navalakha and Nitin Memane has also sought the setting up of an independent Media Tribunal to hear and expeditiously adjudicate complaints against "Media business" filed by viewers and citizens.

A Bench, led by Chief Justice of India S.A. Bobde, has issued notices to the Centre, Press Council of India, News Broadcasters Federation, News Broadcasters Standards Authority and Press Trust of India. The plea wants the court to consider substantial questions of law, including whether the electronic media enjoys greater freedom than ordinary citizens and whether they could only be subject to self-regulation. It has questioned whether free speech entails misinformation, fake news, and hate speech, propaganda, paid news, communal and derogatory reportage, and incitement and so on. It has asked whether regulation will amount to curtailment of the Press if done within the parameters specified under "reasonable restrictions" of Article 19 (2) of the Constitution.

The plea said right to life and dignity envisaged the right of citizens to "free, fair and proportionate media ..... ■

Source: Hindu, Dated: 27.01.2021

LABOUR CODES :REFORM 2.0

After the Atmanirbhar Bharat stimulus package, government has embarked on two major reforms — in agriculture and labour laws. These policy reforms are market-orientated, bringing efficiency, transparency and ease of compliance in both the segments.

There is hue and cry about agriculture reforms in certain sections.But little is being discussed about labour law reforms, which are to be notified in April 2021. As these are also very important, a larger debate is welcome at this juncture.

India had 67 per cent of its population in the working age (15-64 years) in 2019, according to the World Bank. This high ratio of working to non-working age population gives us an opportunity to reap the demographic dividend, if we are able to gainfully employ this population. The window is small and closing fast because of falling fertility rates in India. If we as a country miss this opportunity, we will be old before we get rich. With this, and the fact that employment is poverty alleviating mind, the government is on an overdrive to set an enabling environment.

Indian labour laws are considered complex and restrictive. One of their defining characteristics is job security of the workers covered under them. Complexity also implies huge compliance burden on the companies. As a consequence of this, the labour to capital ratio is low despite India being a labour abundant and capital scarce country. Rigidities in the labour market have also ensured that the employment elasticity of Indian economy has remained low. Therefore, GDP growth does not lead to commensurate employment generation.

The unemployment problem is challenging in India because it emerges from structural rigidities of our labour market. Therefore, amending and consolidating 29 central labour laws into four codes figured prominently on the agenda. The four codes cover; (i) wages; (ii) industrial relations; (iii) occupational safety, health and working conditions; and (iv) social security. The code on minimum wages was made into law in 2019 and the remaining three in September 2020.

A disturbing feature of the Indian labour sector is its very high degree of informality: 93 percent of India's labour force works informally. About 80 percent of it works in the unorganised sector and the remaining is employed informally in the organised sector of the economy. Therefore, a lot of focus in these codes has been to promote formal employment. The definition of "employees" in the code on social security has been expanded to include workers employed through contractors, self-employed migrant workers, additional categories of platform workers etc. It also provides for the registration of unorganised workers, gig workers and platform workers, and says that the central government will set up a social security fund for such workers. These provisions, together with measures like making appointment letters compulsory and allowing business enterprises to hire workers directly on contract, are aimed at reducing informality.

One of the most significant changes brought through the new industrial relations code is the introduction of fixed –term contracts. The first time fixed –term contracts were introduced was in 2016 but those were only for the apparel industry. Though in 2018, these were allowed for other industries as well, the effect was limited because this new form of employment was introduced through changes in rules made under the Standing Orders Act, which applies only to industrial establishment with 100 or more workers. In the absence of such an enabling provision, companies were forced to hire workers informally. Thus, this change is expected to boost employment in industries that experience seasonality in production. Workers will be eligible to all statutory benefits available to a permanent worker proportionately, according to the period of service rendered by them and the minimum qualifying period would not apply to them.

The focus of the current codes on self-certification, reduced compliance and simplification will lead to a lower cost of doing business. Closure, lay –offs

and retrenchment in factories employing up to 300 workers would now not need prior approval of the government concerned. This, coupled with the fact that even the Standing Orders has been made applicable to establishments with over 300 workers, means that smaller companies would not be hobbled by regulatory cholesterol. Not only this, the code on occupational safety, health and working conditions has increased the threshold of its applicability to 20 workers where the manufacturing process is carried out using power and 40 workers where it is done without using power. The government rightly believed that when enterprises grow to a certain size, only then they would be in a position to bear higher compliance burden. The biggest beneficiary of the new codes would be the Micro, Small and Medium Enterprises (MSME) sector. This sector produces 40 percent of India's GDP and employs a higher number of people per unit of invested capital.

With other supportive measures like production – linked incentives, globally competitive corporate tax rate and balanced free trade agreements, we can safely say that the central government has almost solved the jigsaw puzzle that the Indian manufacturing sector had become, and Budget 2021 and the years that follow would see exponential growth in manufacturing and employment.

Economic reforms require expending political capital by the governments, as the benefits of reforms are spread thin and become apparent only with a time lag, while the seemingly adverse impact on certain stakeholder are felt immediately. Therefore, India has not seen many major reforms since 1991 and even then, important areas like land, labour and agriculture were left out of the agenda. The biggest takeaway from these codes, and the recent reforms in the agriculture sector, is a confirmation that a reformist government is at the helm of affairs and it will rid Indian economy of its socialist vestiges. That, for me, is a very reassuring feeling.■

Source: Business Standard, Dated 27.01.2021

DECODING THE CODE ON WAGES

Now central and state governments must decide the national floor wage and minimum rates of wages

Rumours Are Rife that the Code on Wages, 2019, is likely to result in an exponential increase in financial liability of employers in a pandemic-stricken economy. Perturbed employers are reaching out to consultants for advice. Sensing an opportunity, reputed CA/consultancy firms have come out with new service portfolios, which include transitioning into labour codes, restructuring of salaries and strategising for hiring.

The Code on Wages has subsumed four laws, some of which were from the pre-Independence era. These are the Minimum Wages Act, the Payment of Bonus Act, the Equal Remuneration Act and the Payment of Wages Act. The Code was introduced in Parliament to simplify labour laws and amend them largely with the aim of facilitating ease of doing business.

In this context, a point to consider is whether managerial and administrative employees who are drawing salaries way beyond minimum wages would be entitled to benefits available under the Code? The definition of 'employee' is provided in Section 2(k) and it covers 'managerial' and 'administrative' employees, leading us to believe that all benefits under the Code would extend to the said employees.

However, the Code also defines 'worker' in Section 2(z), which specifically excludes 'managerial' and 'administrative'. Most of the benefits afforded under the Code are to the 'worker'. This is clear when we analyse the provisions of the Draft Code on Wages (Central) Rules, 2020, which is under public scrutiny. Rule 5 and 6 read with Rule 4(3) and Rule 6(6)(a) of the said Draft Rules makes us conclude that the government is going to fix minimum rate of wages only for 'workers' who are categorised as unskilled, skilled, semi-skilled and highly skilled. The Draft Rules also provide a detailed list of jobs which are classified into unskilled, semi-skilled, skilled and highly skilled categories. There is no reference to

managerial/administrative category of employees defined in Section 2(k) of the Code in Schedule E. Therefore, it can be safely concluded that provisions regarding fixation of minimum rates of wages are not applicable to this category of employees.

There is also a misapprehension that managerial/ administrative employees will now have to be paid 'overtime' for additional work, which is paid at double the normal rates of wages. Section 14 of the Code specifically provides for overtime to an employee whose "minimum rate of wages has been fixed under this Code by the hour, by the day, or by such a longer wage period as may be prescribed."

The scheme of the Code and Rules does not provide for fixation of minimum rate of wages for managerial/administrative category of employees. The nature of work/job roles mentioned in Schedule E refers to manual and menial nature of work. Therefore, overtime is not payable to managerial/ administrative employees under the Code.

Another issue pertains to the requirement of payment of wages to employees within two days from the date of ouster of an employee from the company, as prescribed under Section 72 of the Code. Similar provisions existed under the Factories Act, 1948, and the Payment of Wages Act, 1936, which have been repealed. This cannot have a major impact as the employer was, in any case, required to pay wages post termination of services of an employee.

Bonus, usually paid on Diwali, was a mandate of the law under the erstwhile Payment of Bonus Act, now subsumed under the Code on Wages. The Payment of Bonus Act has a wage limit and only employees who earn up to Rs 21,000 are eligible to receive statutory bonus. The Code has a similar provision and the government is tasked with notifying the threshold.

Some articles have raised concern about the new definition of wages, and especially regarding the necessity to consider 50% of the gross salary (basic plus dearness allowance) while ascertaining wages. There is also a service requirement that is being pitched by various consultancies for restructuring of salary to minimise the impact of definition of wages.

Section 2(y) of the Code defines wages and includes only basic pay plus dearness allowance plus retaining allowance. The definition excludes bonus, conveyance allowance, PF/pension contribution, payment towards special expenses because of the nature of the job, HRA, remuneration payable under settlement between parties or the order of the Tribunal, overtime allowance, commission, etc. Proviso to the Section states that if the total of the components that are excluded is more than 50% of gross remuneration, then such percentage of remuneration that is more than 50% will be added to wages.

However, the true impact of these provisions would only be seen with respect to unskilled, semi-skilled, skilled and highly skilled category of employees for whom the government is going to lay down the minimum rates of wages. Otherwise, for employees who are highly paid, much beyond the minimum rates of wages, this treatment of considering 50% of gross salary would not have any impact.

Even with respect to PF contributions, the Supreme Court, in its judgment dated February 28, 2019, in the Surya Roshni matter has laid down the broad parameters regarding the kind of allowances that could be excluded while considering basic pay for calculating PF contribution. The wrongful benefit that some employers may have obtained by keeping the basic component of the salary very low has already been wiped off by the said judgment. Thus the Code on Wages does not require an employer to modify the current salary structure for highly paid managerial and administrative employees. Once the rate of minimum wages is laid down by the government for workers, at that point of time an employer may have to consider modifying the structure of wages of such workers who will get affected.

Contractor labour for outsourcing of work has proved to be another sensitive area. The Code provides for coverage of not only contractor supplying labour, but a contractor for contract of work is also covered. However, Section 2(l) and sub-section (iii) provides for a contractor as an employer. Therefore, financial implications, if any, are placed on the contractor.

Certainly, a contractor will expect reimbursement of additional cost, if any. Looking at exploitation of contract labour by a contractor, any marginal increase cannot be subject matter of debate or complaint. The Code has been drafted keeping ease of doing business in mind. Small creases can be ironed out easily by the government.

Now the ball is in the court of the central government and respective state governments to come up with appropriate rules, regulations, notifications and, most importantly, deciding the national floor wage and minimum rates of wages. Till then, we will have to wait and watch.■

Source: Financial Express, Dated.13.01.2021

SC UPHOLDS VALIDITY OF IBC AMENDMENT ACT, 2020

None of the amendments is vague or arbitrary, rules a three-judge Bench

The Supreme Court on 19.01.2021, upheld amendments in the Insolvency and Bankruptcy Code that prescribe that at least 100 allottees from the same real estate project should support the initiation of corporate insolvency resolution process in the National Company Law Tribunal against their property developer.

The Insolvency and Bankruptcy Code (Amendment) Act of 2020 had introduced a threshold that required a minimum of 100 allottees or 10 per cent of the total allottees of a project, whichever was less, to jointly apply for corporate insolvency resolution in the Tribunal. The allottees ought to be from the same real estate project. Aggrieved allottees drawn from different projects of the same developer cannot form the 100.

A third amendment had given a 30-day deadline for existing applicants to find the requisite number of supporters to meet the threshold of 100, or their plea pending in the Tribunal even before the commencement of the 2020 Act would be deemed as withdrawn.

Resolution process

Under the erstwhile regime, even a single allottee could initiate the corporate insolvency resolution process against his property developer. There was no need to garner support from other allottees.
A three-judge Bench led by Justice Rohinton F. Nariman found none of the amendments vague or arbitrary.

The court agreed with the Legislature that having a single allottee approach the Tribunal would be risky, considering that a corporate insolvency resolution may also entail a complete overhaul or replacement of the developer's company management. Such an initiative by a lone allottee would de-rail the plans of other allottees, who still had faith in the existing developer or were pursuing other legal remedies.

"There can be hundreds or even thousands of allottees in a project. If a single allottee, as a financial creditor, is allowed to move an application, the interests of all the other allottees may be put in peril... Other allottees may have a different take of the whole scenario. Some of them may approach the Authority under the Real Estate (Regulation and Development) Act of 2016. Others may, instead, resort to the Consumer Protection Act. The remedy of a civil suit is, no doubt, not ruled out," Justice KM Joseph, who authored the judgment for the Bench, reasoned.

The court said allottees of a real estate project are a heterogenous group. A majority of them may want to give more time to the developer to complete the project.

"An individual allottee, out of the heterogenous group, would throw the spanner in the works and bring the entire real estate project itself to a possible doom," Justice Joseph pointed out the flaw in the working of the previous regime before the amendments.

The 474-page judgment, based on petitions filed by allottees of real estate projects and money lenders who finance such property endeavours, said there is a sound rationale behind the law's requirement that the 100 applicants should be from the same project.

Several allottees bunch together from various

projects would lead to confusion as their complaints would vary and make the insolvency resolution process cumbersome.

"The connection with the same real estate project is crucial to the determination of the critical mass... If it is to embrace the total number of allottees of all projects, which a promoter of a real estate project may be having, in one sense, it will make the task of the applicant himself, more cumbersome. It becomes a sword, which will cut both ways. This is for the reason that the complaints, relating to different projects, may be different," the court explained.

The court dismissed averments made by petitioners that the 30-day deadline was "manifestly arbitrary".

"Prescribing a time limit in regard to pending applications, cannot be, per se, described as arbitrary, as otherwise, it would be an endless and uncertain procedure. The applications would remain part of the docket and also become a Damocles Sword overhanging the debtor and the other stakeholders with deleterious consequences also qua the objects of the Code," the Supreme Court said.

However, the court said it would have been, undoubtedly, more reassuring if the period had been longer than 30 days.

In a mild criticism of the manner of enactment of the amendments, the court said "the law came as a bolt from the blue". ■

Source: Business Line, Dated:20.01.2021

GOVT OPEN TO 4-DAY WORK WEEK, BUT WITH CAP ON TOTAL HOURS AT 48

Soon a company may be able to offer four-day work week to its employees. But this flexibility will come with some conditions, according to the Labour Ministry. Currently, the usual work week is of 5 or 6 days. However, the total working hours will remain unchanged.

"We are open to providing flexibility in working days," Labour Secretary Apurva Chandra told media here on 08.02.2021, If a company offers a 4-days work week, then the remaining three days should be paid offs, he said adding that the issue of flexibility in working days is being discussed ahead of the finalisation of Rules for new the Labour Codes.

The government has already indicated that it can implement all the four Labour Codes — Wages, Industrial Relations, Occupational Safety, Health & Working Conditions and Social Security — before the start of the new financial year. All these have been enacted and draft Rules and draft model Standing Orders are already up for discussion.
Chandra said that even with the flexible work week, the conditions related to weekly working hours will remain the same. The draft Rules for Occupational Safety, Health and Working Conditions Code says no worker will be required or allowed to work in an establishment for more than 48 hours in a week. Also, the period of work shall be inclusive of intervals for rest, and shall not exceed 12 hours in a day.

CONTRACT WORKERS: The Secretary expressed confidence that proposed regime under the new Labour Codes will have a lot for contract workers. Safety and health facilities for contract workers will be at par with permanent employees. "There will be a grievance redress mechanism for such workers," he said. For the social security of gig/ platform workers, he said, "All tech platforms are on board for a social security fund. They are keen to have such a fund."

Earlier, the Social Security Code proposed a Social Security Fund for gig/platform workers where the employers are expected to contribute 1-2 per cent of the annual turnover or 5 per cent of the liability of the aggregator to gig workers and platform workers, whichever is lower. Now, it will be 1 per cent of the revenue. Also, workers will contribute a minimum of Rs.100 a month. The fund is expected to provide social security benefits to nearly 1 million workers.

LABOUR SURVEY: Chandra said that four major surveys on migrant, domestic, transport and professional workers are expected to kick-off in March. Though their periodicity has not been fixed, they "could be yearly exercises," he said.■

Source: Business Line, Dated: 09.02.2021

PSBS IN TURMOIL AFTER MEGA MERGER: PARLIAMENT PANEL

The mega merger of public sector banks (PSBs) has led to a "turmoil" as the state-owned banks do not have the necessary talent for specialised functions like risk management and new financial technologies, the Parliamentary Standing Committee on Finance said in its report.

"PSBs are also going through considerable turmoil because of the mega mergers; this will require even closer assessment of human resources to ensure that sufficient management talent is available for the PSBs as they seek to streamline and expand their operations," according to the report of the committee, chaired by BJP MP Jayant Sinha.

From April 1, 2020, ten PSBs were amalgamated into four, taking the total number to 12.

After the merger exercise, Punjab National Bank, Oriental Bank of Commerce, and United Bank of India combined to form one lender; Canara Bank took over Syndicate Bank; while Union Bank of India amalgamated with Andhra Bank and Corporation Bank. Indian Bank subsumed Allahabad Bank.

With the new privatisation policy announced in the Budget, the government has announced that four broad sectors, including banks, will have "bare minimum" government presence with the remaining being privatised, merged or subsidiarised with other CPSEs.

The panel also said the government should fully clarify the functioning of the Banks Board Bureau (BBB), and the BBB should assist PSBs in acquiring and retaining such specialised talent.

Strengthen PSB competitiveness

The parliamentary panel also raised concerns on the "depressed" market valuations of state banks.

"PSBs continue to have very low price-book multiples and their market valuations remain depressed. The committee notes that the PSBs do not appear to have differentiated strategies that will enable them to compete effectively," said the report.

Apart from the mega mergers, the Department of Financial Services should also prepare a comprehensive plan on how to strengthen PSB competitiveness, the report said. Low valuations imply that banks will find it difficult to raise equity through the markets, it said.

As a result, if NPAs increase yet again due to adverse global trends, significant funding will be required from the government to keep PSBs appropriately capitalised.

On this observation, the government replied that it has adopted a measures to reform PSBs, and strengthen their competitiveness, which include industry-linked improvement in turnaround time, digital banking services, competitive pricing, customer-need driven marketing strategy and reach, prudential lending and effective loan life-cycle management.■

Source: Business Standard, Dated: 04.02.2021

PLEA SEEKS LAW TO REGULATE SOCIAL MEDIA CONTENT

The Supreme Court 01.02.2021, sought responses from the Centre and others on a plea seeking framing of law to regulate social media platforms like Facebook and Twitter and make them responsible for allegedly spreading fake news and hate speeches.

A bench comprising Chief Justice S.A. Bobde and Justices A.S. Bopanna and V. Ramasubramanian issued notices to the Centre and others on the plea and tagged it with a pending petition which has sought setting up of a media tribunal to adjudicate on complaints against the media, channels and networks.

The apex court was hearing a petition filed by

advocate Vineet Jindal who has sought directions to the Centre to frame law for prosecuting those involved in spreading hate and fake news through social media platforms.

The plea has sought directions to the authorities concerned for establishing a mechanism for automatic removal of fake news and hate speeches within a short time frame. It said that freedom of speech and expression is a complex right as it may be subject to reasonable restrictions and it is not absolute and carries with it special duties and responsibilities.

The plea, while saying that reach of social media is much wider than traditional media, has also referred to a few communal violence incidents in the country where social media was misused.

On January 25, the top court had sought responses from the Centre, Press Council of India (PCI) and News Broadcasters Association (NBA) on a separate public interest litigation (PIL) which has sought setting up of a media tribunal to adjudicate on complaints against media, channels and networks.■

Source: Indian Express: Dated: 02.02.2021

[2020 (166) FLR 127]
(DELHI HIGH COURT)
Ms. REKHA PALLI.J
W.P.(C) No. 16776 of 2006 and C.M.No.13840 of 2006
January 23, 2020
Between
DELHI TRANSPORT CORPORATION
And
KRISHNA BAHAL

Misconduct-Penalty of stoppage of two increments with cumulative effect-Industrial Tribunal directed the petitioner to grant her all consequential benefits as petitioner failed to prove any misconduct on the part of the respondent-Hence, present writ petition-Held when the employee's misconduct was not proved there was no question of imposing penalty-When the misconduct is proved thereafter only the Disciplinary Authority had to take the past conduct of the employee for determining the quantum of penalty to be imposed-Petitioner failed to prove the respondent's misconduct before Tribunal-There was no reason as to why the respondent's alleged past negligent conduct could be a ground to hold her guilty of misconduct or to impose any punishment on her for the same-No infirmity in the well reasoned award-Writ petition dismissed. [Paras 7 to 10]

JUDGMENT

Ms. REKHA PALLI, J.- The present writ petition filed by the Delhi Transport Corporation assails the award dated 06.04.2005 passed by the learned Central Government Industrial Tribunal, Karkardooma Courts, Delhi in ID No.95/2001. Under the impugned award, the Labour Court has, after holding that the petitioner had failed to prove any misconduct on the part of the respondent, set aside the penalty order dated 13.07.1994 passed against him.

2. The brief facts as emerge from the record are that the respondent joined the services of the petitioner/corporation on 19.04.1979 at the post of 'Clerk'. On 26.11.1993, she was served with a memo seeking her explanation for having misplaced the original papers of the petitioner's factories and municipal license while travelling to the petitioner's headquarters in a bus on 17.11.1993. In her reply to this memo, the respondent denied all the charges levelled against her. Subsequently, the respondent was served with a charge sheet dated 03.12.1993 with a further allegation that despite misplacing the original copies of these licenses, she had not informed her superior officer of this incident till 26.11.1993.

3. In view of her denial of the charges, a departmental inquiry was conducted against the respondent wherein the inquiry officer held the charges against her to stand proved. On submission of the inquiry report, the respondent was granted an opportunity to submit her explanation, which was duly considered. Resultantly, the petitioner imposed a penalty of stoppage of two increment with cumulative effect on the respondent vide its order dated 13.07.1994.

4. Aggrieved by the imposition of this penalty, the respondent raised an industrial dispute, which came to be referred to the Industrial Tribunal. Before the Tribunal, the petitioner defended the penalty imposed on the respondent by alleging that she was guilty of serious misconduct. Based on the pleadings of the parties, the following issues were framed by the Labour Court:-

> "1. Whether the action of the management is without holding legal and proper enquiry? OPW
>
> 2. If issue no.1 is decided in favour of the workman then whether the workman has committed the misconduct as alleged? OPM
>
> 3. Whether the cause of workman has been duly espoused? OPW
>
> 4. Whether the punishment imposed upon the workman by the management vide order dated 13.7.94 is illegal and unjustified? OPW"

4. As noted hereinabove, issue no.1 related to the validity of the inquiry. The Labour Court, on an examination of the record, concluded that the inquiry had been conducted without supplying relevant documents to the respondent and, resultantly, held the enquiry as being vitiated. The petitioner was, thereafter, granted an opportunity to lead evidence to prove the respondent's alleged misconduct. The petitioner, however, did not lead any evidence which could prove the respondent's misconduct but only examined the Disciplinary Authority, i.e., one Mr. Qamar Alam, as its witness who merely reiterated the contents of the inquiry report which, in any event, stood vitiated. In these circumstances, the Tribunal held that the petitioner had failed to lead any evidence whatsoever to prove the respondent's misconduct, in the light of which the allegations against her stood unproved. The Tribunal opined that in the absence of any misconduct being proved against the respondent, the penalty imposed on her was not sustainable and, accordingly, directed the petitioner to grant her all consequential benefits.

Assailing the said award, the present writ petition has been filed.

5. Ms.Manisha Tyagi, learned counsel for the petitioner submits that even if the enquiry stood vitiated and the petitioner did not lead any evidence to prove the misconduct, the Tribunal could not simply ignore the respondent's past conduct which showed that she had been negligent even on earlier occasions. For these reasons, she contends that the penalty imposed on the respondent could not, in any manner, be deemed as disproportionate or unjustified. In support of her contention, she places reliance on the decision of the Supreme Court in Union of India and Others v. Bishamber Das Dogra. She, therefore, prays that the impugned award be set aside.

On the other hand, Ms. Rashmi B Singh, learned counsel for the respondent while supporting the impugned award submits that the plea of Ms. Tyagi that the respondent's past record ought to have been considered is wholly misplaced. She submits that once the Tribunal came to a categorical conclusion that the petitioner had failed to lead any evidence whatsoever to prove misconduct on the part of the respondent, neither does the question of taking her past conduct into consideration arise nor does the decision in Bishamber Das Dogra (supra) apply to the facts of the present case. She, therefore, prays that the writ petition be dismissed.

6. I have heard learned counsel for the parties and with their assistance perused the record.

7. A perusal of the impugned award shows that once the inquiry stood vitiated on account of the petitioner's failure to supply relevant documents to the respondent during the course of the same, the petitioner was granted adequate opportunities to prove the respondent's misconduct which it failed to avail. Thus, the Tribunal was justified in holding that

the petitioner had failed to lead any evidence to prove the respondent's misconduct. In fact during the course of arguments, Ms.Tyagi has not seriously disputed these findings, but has primarily urged that once the respondent's past conduct was brought on record, the Tribunal ought to have appreciated that the imposition of penalty of stoppage of two increments with cumulative effect on her was fully justified.

8. Having given my thoughtful consideration to the aforesaid submission and perused the decision in Bishamber Das Dogra (supra), I am unable to agree with Ms.Tyagi. In the said decision, the Supreme Court was dealing with a case where the employee's misconduct stood proved and the only issue which survived for the consideration of the Court was whether, while determining the quantum of penalty to be awarded, his past conduct ought to be considered, even if does not find mention in the charge sheet. The observations of the Supreme Court in paragraph 30 of Bishamber Das Dogra (supra) reads as under:-

> "30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require."

9. When the facts of the present case are considered in the light of the decision in Bishamber Das Dogra (supra), I find that the ratio thereof is wholly inapplicable here. When the employee's misconduct is not proved, there is no question of imposing penalty on them; it is only when the misconduct is proved that it is open to the Disciplinary Authority to take into consideration the indisputable past conduct of the employee for the purpose of determining the quantum of penalty to be imposed on them. In the present case, when the petitioner had failed to prove the respondent's misconduct before the Tribunal, which finding has not been seriously assailed, I see no reason as to why the respondent's alleged past negligent conduct can be a ground to now hold her guilty of misconduct or impose any punishment on her for the same.

10. For the aforesaid reasons, I find no infirmity in the well reasoned award passed by the Tribunal.

The writ petition along with pending application, being meritless, is dismissed with no order as to costs.■

Petition Dismissed.

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