

**LABOUR RESEARCH**

**MARCH - APRIL 2017**



## THE SUN THAT STRIKES

**W**ith the onset of summer, heat wave started blowing across the country alarmingly, parching agricultural land with dying greenery, loss human lives and animals and throwing life out of gear.

This is a phenomenon had been happening during the past several decades but no systematic efforts were made by the various governments that came to power. The draught and the blistering heat wave, had been ringing alarm bells among the environmentalists. Depleting green cover and vanishing water bodies are among other major reasons for the current heat wave. When we are drifting away from the rhythm of nature due to excess exploitation, carbon dioxide is increasing in the atmosphere which is getting polluted, forest is shrinking, desert is widening, rivers are getting dried up. Shrinking forest has also resulted in dearth of rain, draught and advancing desert.

Heat is now the second largest natural killer in India, after water, notably through floods and water born deceases. Besides loss of life heat also effects the health in general of all living organisations and productivity in the country.

Government had woken up on many occasions in the past when the country is caught in the vagaries of nature such as draught, flood, earthquake, tsunami etc. In view of the heat wave blowing across the country and the people are dying in the scorching heat it is necessary that the government should revise their development agenda to meet the situation and rehabilitate those who are caught not only in the flood and other natural calamities but also affected due to draught and heat waves. Country is also witnessing farmers committing suicide and agitating whenever their crop fail in the recurring draught putting them into severe debt trap. Common man do not have the capacity to withstand such calamity, nor the government can take it lightly. While we talk about development and economic growth, we forget about the people who are homeless and exposed to the scorching sun and dying in the field.

Carbon dioxide is the prominent contributor of global warming that also reduces the oxygen level on earth. Average temperature near earth surface was steady till the advent of industrial revolution which is now increasing alarmingly. According to report Carbon dioxide emitted to the atmosphere is 35.5 percent by Asian countries as against 25.5 percent by North America and 17.2 percent by European

Countries. The way the heat is increasing in the atmosphere by Co2 is called Green House effect. In order to generate clean energy it is necessary to reduce Green House Gases (GHG) that includes Ozone and Carbon dioxide. The Scientific experiment conducted had not only led to global warming but also destroyed the Ozone layer in the atmosphere that protects the earth from the direct sun rays.

Forecast is that earth warming may increase the temperature in the coming years. According to environmentalists the temperature could even rise up to 50° Celsius, unless proper steps are not taken to control the temperature. The temperature rises to 1.5 to 2 degree in the recent years as against 0.85 degree in global average. This is an alarming situation. Increase in temperature is linked to climate change and it is expected that more such extreme whether condition we may prevent in the near future. According to environmentalists, other than causalities among human beings, live stock, flora and fauna, the water table also may deplete rapidly.

Government appointed Gadgil Committee to study and report on the ecological impact on western Ghats. More than the industrial growth the eco sensitive area in the western Ghats is to be saved as part of reducing global warming. As such the government should stop indiscriminate mining, felling of trees and digging bore wells in the area.

As the global warming and the consequent draught is a recurring feature, government need to have a clear climate policy, in handling flood and other natural calamities. Government should provide shelters to those people who are exposed to sun and sun's fury, with proper protection like the night shelters provided during winter. Accesses to potable water is also the key to minimize death due to heat.

Like 'Swachh Bharat' scheme government should also come out with a policy of a 'Harita Bharat' thereby making India green, that may reduce global warming improve the oxygen level in the atmosphere and bring rain. ■

**MATERNITY BENEFIT (AMENDMENT) ACT, 2016 NOTIFIED.....**

**Salient Features of the Act.....**

- i. Maternity leave available to the working women to be increased from 12 weeks to 26 weeks for the first two children
- ii. Maternity leave for children beyond the first two will continue to be 12 weeks...
- iii. Maternity leave of 12 weeks to be available to mothers adopting a child below the age of three months as well as to the "commissioning mothers". The commissioning mother has been defined as biological mother who uses her egg to create

 	<p><b>LOK SABHA</b></p> <p><b>PASSES</b></p> <p><b>MATERNITY</b></p> <p><b>BENEFIT</b></p> <p><b>BILL, 2016</b></p>
<p><b>Amendment Act received the assent of President of India on 27<sup>th</sup> March 2017</b></p>	

- an embryo.....
- iv. Every establishment with more than 50 employees to provide for crèche facilities for working mothers and such mothers will be permitted to make four visits during working hours to look after the feed the child in the crèche.....
- v. The employer may permit a woman to work from home if it is possible to do so.....
- vi. Every establishment will be required to make these benefits available to the women from the time of her appointment. ■

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

## THE ECONOMICS OF MATERNITY LEAVE

Parliament recently more than doubled the extent of paid maternity leave from 12 weeks to 26 weeks, placing India in the league of wealthy Western countries that have some of the most generous benefits for new mothers. In fact, once the amendment to the Maternity Benefit Act, 1961, comes into effect, only Canada and Norway will be ahead of India, with 50 and 44 weeks of paid leave, respectively. This development deserves a cautious welcome.



new law in 1999 allowing all workers with children under 7 to work reduced hours without being fired, it was only women who took the benefit- and soon companies were found to be hiring and promoting fewer women while women of childbearing age were 45% more likely to be fired, according to a study by the IE Business School in Madrid. One way to offset this problem is to

offer fathers paternity leave, as well as have the option of parental leave wherein both parents can share an extended leave period – as is already the norm in many developed countries.

On the one hand, the many benefits of maternity leave, particularly for the new mother and child, are well documented: Data from around the globe shows that access to maternity leave reduces the risk of infant mortality, and improves breast feeding rates and duration which has a positive bearing on the child's physical and mental health. Studies also show that adequate maternity leave (of at least 12 weeks) helps prevent postpartum depression and stress in new mothers. On the economic front, there is ample evidence to suggest maternity leave does not hurt business and is actually good for the economy- women workers who have access to maternity leave are more likely to return to the workforce, allowing their firms to not just retain but also attract the best talent. Moreover, the cost incurred by employers in the process (reimbursements for temporary replacements or overtime expenses) is considered to be negligible.

On the other hand, however, there have also been instances wherein pro-women, family-oriented policies have backfired. For example, after Chile made it mandatory for companies of a certain size to provide free childcare (India is doing something similar by making it compulsory for companies with either 30 women employees or more than 50 employees to provide access to a crèche) it was found that companies responded by reducing women's salaries by nine to 20%. Similarly, when Spain introduced a

Still, it is worth noting that even in the advanced economics of Scandinavia which boast of gender parity in the workforce, it has been found that while expanded parental leave increased women's participation, much of the increase was in part-time work, as Chinhui Juhn and Kristin McCue note in *Specialization Then And Now: Marriage, Children, and The Gender Earnings Gap Across Cohorts*. Their results were corroborated in a Cornell study across 22 countries which found that while generous maternity leave ensured that women returned to the labour force, they were more likely to have unstable contract jobs. In fact, Juhn and McCue observe, women in these countries were less likely to be in management and professional occupations than women in the US who only get 12 weeks of unpaid leave – a rarity in the developed world.

So how will this play out in the Indian context? A survey by the Associated Chambers of Commerce and Industry of India last year found that 25% of urban Indian women quit their jobs after having their first child. Extended maternity leave might help change this pattern, but the question to be asked is : Will this be enough to bridge India's appalling gender gap in the workforce ? Or could it actually make things worse?.

In 2012, which is the most recent data available, only

NEVER BEND BEFORE THE INSOLENT MIGHT

27% of Indian women worked compared to 55% in OECD countries and 63% in East Asia. This deficit shaves off an estimated 2.5 percentage points from the country's gross domestic product every year. Worse still, India is one of the few countries where women's participation in the workforce has actually fallen- the International Labour Organisation reported last year that female participation declined from 34.1% in 1999 -00 to 27.2% in 2011-12. There is also a stark rural –urban divide: In 1972-73, women comprised 31.8% of all rural workers, in 2011-12 that figure had dropped to 24.8%. For urban workers, the number has increased only marginally, from 13.4% to 14.7% in that same time period.

What explains this poor participation number – that too in spite of high economic growth and rising school enrolment numbers for women? According to the ILO report, a complex interaction of social and economic factors is at play here. For one, an adequate number

of jobs which could easily absorb women workers especially in the rural areas, was not created. Second, even if there were jobs available, women didn't always take them up because household incomes were rising anyway and they had no incentive to step out. Add to this long list of barriers that women face in accessing employment opportunities, such as the risk of exploitation particularly in the informal sector, the lack of wage parity, concerns regarding safety and security etc. and the paltry numbers begin to make sense.

It also becomes clear that India's problem is not just about ensuring women return to the workforce after childbirth but in bringing women into the workforce in the first place. Resolving this will require more than just maternity leave- let us keep that in mind as we celebrate our newly acquired progressive credentials. ■

*Source: Mint -15.3.17*

### EPF WITHDRAWALS TO BE EASIER NOW

Having faced flak for the delays in claim settlements, the Employees' Provident Fund Organisation (EPFO) has decided to introduce a single –page claim form, instead of current multiple forms for withdrawing funds accumulated with the retirement fund body. Moreover, a self –certification will suffice henceforth to withdraw funds.



Similarly, for marriage advance or for availing advance for post-matriculation education of children, no document, including marriage card, would be required to be submitted. Under the existing rules, an EPFO subscriber can partly withdraw his accumulations on 6-7 grounds. A maximum of 90% of the

accumulated fund can be withdrawn for house building purpose. Full withdrawal is not permitted until a subscriber is out of job for at least two months. However, to avail advances for medical reasons, the existing practice of mandatory submission of medical certificate would continue for some time even as the EPFO is planning to do away with that as well. This would require changes in the scheme for which a proposal has been sent, the official said.

“The composite form duly signed by the subscriber shall be construed as self certification for withdrawals, for which no documents would be required to be submitted to the EPFO offices.” according to authority. The single page claim form will also apply for those accounts not seeded with Aadhaar, but in that case, the subscriber will have to get the employers' signature, as is the practice now.

Under the extant rules, a subscriber has to provide various certificates as a proof of the need for the withdrawal for purposes. If one wants to withdraw for housing purposes, she / he have to submit the utilization certificate. Under the new declaration form, it has been dispensed with.

The EPFO corpus is created through a 12% contribution from the employee's salary along with a matching contribution from the employer and the interest accrued on the entire money. EPFO has 3.4 crore active subscribers. ■

*Source: Financial Express, dated- 22.2.17*

**DEFEND THE ECONOMIC SOVEREIGNTY OF THE COUNTRY**

## GRATUITY ACT DOES NOT CONTEMPLATE DISTINCTION AMONG PERMANENT TEMPORARY OR SUBSTITUTE EMPLOYEE

The Payment of Gratuity Act, 1972 provides that an employee having rendered service of 5 years or more will be entitled to gratuity. It is immaterial whether an employee is a regular, permanent, temporary, substitute or a daily wager. Herein below is an important judgment which will go long way:



who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway, company shop or other establishment to which this act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

### Brief Facts:

An employee of the Idappadi Municipality hereinafter referred to as 3rd respondent. The third respondent was substitute worker in the petitioner Municipality from 2.3.1968 to 14.11.1988. Thereafter, she became a permanent worker. She retired from service on 30.6.2004 on attaining the age of superannuation. She was paid DCRG of ₹38,773 for the period from 14.11.1988 to 30.6.2004 and the period from 2.3.1968 was not counted for the purpose of payment of gratuity. Hence, she approached the Controlling Authority under the Payment of Gratuity Act, 1972 (shortly "the Act") and the Controlling Authority allowed her claim. The appeal preferred by the writ petitioner before the Appellate Authority under the Payment of Gratuity Act was dismissed. The writ petition is against the aforesaid order of the said authority.

### Reasons and Decisions:

Appeal dismissed

As rightly contended by the learned Amicus Curiae, section 2(e) of the Act defines "employees", which is extracted hereunder:

"Employee" any person (other than an apprentice)

The aforesaid definition makes it clear that "any person" is defined as employee and the only exemption is the apprentice. Even the apprentice under the Apprentice Act alone are exempted and not other apprentices. Accordingly, the Controlling Authority is directed to pay the amount of gratuity, alongwith interest, as provided under the Payment of Gratuity Act, to the third respondent workman, after adjusting DCRG, since the same could have been deposited at the time of filing of the appeal within a period of one month from the date of receipt of a copy of this order. It is well-known that gratuity is in the nature of a retiring benefit to those employees who have rendered long and unblemished service to the employer and have thus contributed to the prosperity of the employer or organization. It is this concept of reward for long and meritorious service that is incorporated in section 4(1) of the Act. Long and meritorious service would necessarily contemplate that an employee has, in fact, rendered service and it was not enough if he was merely on the muster roll of the employer under a subsisting contract of employment. ■

By.....H.L. Kumar, Advocate  
Source: FLR 2017(152)

## IT'S TIME TO LIBERALIZE GRATUITY RULES FURTHER

Recently, the central government decided to increase the gratuity limits for private sector employees as well from ₹10 lakh to ₹.20 lakh. This is a welcome step and follows the same principle applied to the central government employees whose gratuity limit was increased to ₹20 lakh in July 2016. To implement these changes, the government will amend

both the Payment of Gratuity Act and the Income Tax Act. This is because the gratuity received (i.e. computed as per the Payment of Gratuity Act) is tax free.

This is a welcome step, but the government needs to liberalize the gratuity rules further. First, the rule about

SUCCESS COMES TO THOSE WHO DARE AND ACT

minimum five years of service', set a long time ago, needs to be discarded because labour mobility is quite high these days. Since very few employees stick with a company for five years, this needs to be brought down to at least three years.

There is another reason this reduction is needed; since most companies follow cost –to the company (CTC) rules, gratuity is already part of the salary package. That means an employee, who leaves service before completing 5 years, is actually forced to give up a part of his or her salary. There may be some benevolent companies that pay gratuity as a taxable component at the time of final settlement, but most companies keep it to themselves.

Although the gratuity rules of central government and private sector employees are aligned to this move, state government employees are still left out. There are several state governments that still continue with the ₹10 lakh restriction on gratuity. Hope they also increase this limit to ₹20 lakh at the earliest.

Third, ad-hoc increases in limits, such as the recent one, create problems for employees who retire just before these hikes kick in. For example, consider an employee who retired in 2016 and got a gratuity of ₹18 lakh (i.e. ₹10 lakh tax free and ₹ 8 lakh taxable) with another employee who retired in 2017 and got a gratuity of ₹18 lakh (i.e. entire ₹18 lakh tax free).

To make these things equal to all, the government need to revise these limits annually and this can be based on the inflation data published by the government.

Finally, this arbitrary ceiling on gratuity (at ₹ 20 lakh) is not needed because gratuity is calculated based on a well laid –out formula.

As per the Payment of Gratuity Act, employees are eligible to get 15 days salary for each completed years of service. Gratuity is computed using the formula – last drawn salary X15/26Xnumber of years of service. Please note that only basic and dearness allowance (DA) is considered as salary here. Since there are only 26 working days a month, the same is used instead of 30 days for calculations.

Now, assume that an employee's gratuity value comes to ₹.23 lakh. Here again, some benevolent companies may pay this gratuity as a taxable component (i.e. ₹ 20 lakh as tax free and ₹3 lakh as taxable), but other companies may keep it to themselves. To avoid such situations, the government should remove ceiling from the Payment of Gratuity Act. And if the government wants to restrict tax benefit on gratuity (i.e.to avoid misuse of this provision), it can retain the restrictions under the Income Tax Act. ■

Source : *Economic Times*,Dt.9.3.17

## STANDING ORDERS/SERVICE RULES OF ITEMS OF MISCONDUCT- ENUMERATION THEREOF

**I**n general, employers do provide in the Standing Orders or in the Service Rules governing their employees various acts or omissions and commissions which would constitute misconduct for which the employee would become liable because in service matters concept of deviancy has no room and that the disobedience has no space. By and large most of these acts or commissions or omissions have been standardised and relate to the efficiency, integrity, discipline and over all conduct of the employee. As and when an employee is found guilty of any of the stipulated misconduct obviously there is no difficulty in imposing a penalty on the employee. However this position is not all simple and it is interwoven with certain subtleties and technicalities. One more aspect is worth mentioning here, it is where the employee is found guilty of an act or omission which

does not come within the preview of misconduct as defined and illustrated in the Service Regulations or the Certified Standing Orders, is it open to the employer to punish the employee even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. One school of thought opined that management could proceed against such an employee if the alleged misconduct was grossly subversive of discipline or bordered moral turpitude. Then there is one more aspect which is whether the various acts of misconduct collocated in the Standing Orders would constitute misconduct punishable under Standing Orders if committed within the premises of the establishment or in the vicinity thereof or irrespective of time place content. Such were the posers which were the subject matter of the basic and celebrated case law of **Glaxo Laboratories**

**WORK IS WORSHIP, DO YOUR DUTY**

**(I) Ltd. v. Labour Court, Meerut and others, 1983**  
(47) FLR 508 (SC).

For properly understanding and appreciating the aforesaid situations we may be required to go the evolution of industrial relations in this country. In the days when the industrial relations were governed and regulated by the harsh weighted law of hire and fire the management was supreme master and relationships were determined by the contract between unequals and the management. The developing notions of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partners and the industries viz. those who invest blood and flash, against those who bring in capital. A modest step was then taken to compel by statute, the employer to prescribe minimum condition of service subject to which employment is given. The Standing Orders Act came into being which attempted to define this with sufficient precision the conditions of employment under them and to make the same conditions known to the workmen employed by them. This was a march from statutes to contract. The scheme of the Act would show that Certified Standing Orders have more or less a statutory flavour. If that we are so, ordinary cannons of construction of a statute would be attracted where a dispute arose about the construction or interpretation of Standing Orders. There was a time when notional extension of a particular Standing Orders was accorded and the misconduct included there in was levied against a workman even if was committed outside the premises of the establishment it has some bearing on the working of the establishment. This hypothetical question engaged the attention of the employer, employee and the Courts till it was settled by their Lordships of the Supreme Court in the case of Glaxo Laboratories which by a judgment ruled that the misconduct should first be enumerated. Then must have been committed with in the precinct of the premises of the establishment. This brings us to the

crux question which I am trying to answer in this article.

There are certain senior categories of the gold collar employees who are not covered by the Standing Orders and that they are inducted in the employment by means of an appointment letter which ordinarily does not enumerate as to how the employer would proceed against such an employee if he commits some major misconduct or acts subversive of discipline. On the basis of this case law the employer would be helpless to proceed against such delinquent employee. It is therefore suggested that the employer should have Standing Orders for such employees as well but that would be a difficult exercise because of the several legal formalities prescribed in the Industrial Employment (Standing Orders) Act, 1946. Alternately therefore an employee while appointing some senior people must enumerate certain major misconducts in the appointment letters indulgence in which would attract disciplinary action. The employer can also incorporate a clause in such appointment letter that anything subversive of discipline or acts which is immoral and unethical would attract severe disciplinary action. Compartmentalization approach in this regards would be of little consequence for employers.

Precisely speaking form, feature and fundamentals of misconducts need be specifically defined and enumerated for processual propriety and further they ought to be properly conditioned by facts and circumstances of each situation before they can be acted upon to penalise a Gold Collar employee in managerial and administrative category because employee in this category also now shall not be hit blow the belt. ■

*By.....P.C. Chaturvedi*  
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*Source: FLR 2017 (152)*

## **SBI REPORT SEES SHARP FALL IN JOBLESS RATE**

**C**ontrary to market perception, India's unemployment rate halved from 9.5 percent in August 2016 to 4.8 percent in February this year and among major States, a sharp decline was registered in Uttar

Pradesh. According to the SBI Eco-flash, during August 2016 to February 2017, unemployment rate in Uttar Pradesh registered the maximum decline from 17.1 percent to 2.9 percent, followed by Madhya Pradesh (10

**MGNREGA Played a major role in generating Rural jobs**

**FORTUNE FAVOURS THE BRAVE**

percent to 2.7 percent). Odisha (1.2 percent), 2.9 percent) and Bihar (13 percent to 3.7 percent)“We believe this decline is primarily due to the government’s efforts in providing new employment opportunities in rural areas,” said the report compiled by State Bank of India research team led by Group Chief Economic Advisor, Soumya Kanti Ghosh.

### MGNREGA push

The report further noted that the decline was also explained by the work demanded /allocated by households under MGNREGA, which increased from 83 lakh households in October 2016 to 167 lakh households in February 2017. Moreover, the number of works completed under MGNREGA increased by a whopping 40 percent to 5.5 lakh in 2016-17

compared to 36.0 lakh in 2015-16. Notable increase was registered in the works of anganwadi, drought proofing, rural drinking water, and water conservation and harvesting. “This is a welcome trend and will contribute greatly for developing rural infrastructure a sine qua non for sustained agri growth,” the report said. In the Union Budget FY15, MGNREGA scheme was allocated a budgetary resource of ₹48, 000 crore.

During FY2017-18, another 5 lakh farm ponds will be taken up, compared with the expected 10 lakh during FY2016-17. This measure alone will contribute greatly to drought proofing of gram panchayats. The unemployment rate was estimated by BSE and CMIE from data collected regarding the employment / unemployment status of all members of 15 years and more of a sample of randomly selected households.■

**Source : Business Line Dt.6.3.17**

## WATER THE LIFELINE OF A COUNTRY

**E**arlier civilizations such as Sumerian, Harappa, Mohenjo daro, Indus valley were all centered around river valleys. They no longer exists now when the river valleys got shrunk or dried up due to over exploitation or encroachment turning the area in to barren. This has also resulted in people migrating from the area seeking better pasture. Sahara the biggest desert in the world was once a fertile land rich in flora and fauna with vegetation. The area was also part of an earlier civilization with rivers Eufretis and Tigress and the Nile Valley in the east, which has eventually, became a desert due to over exploitation.



***It is necessary to protect our river; water bodies and natural resources instead of allowing it go waste and make the land to parch.***

India a fertile land with a net work of rivers may meet with similar fate unless the present generations protects the rivers, water bodies, natural resources including forest wealth from exploitation. India is a tropical country account for 2.4 percent of world’s geographical area, 4 percent of water resources and 1.5 percent of forest resources. India is also in the 7th position in water resources and 9th in the position of availability of rain. According to Kotak Institutional Equity’s Report India is getting around 2600 billion cubic meter (bcm) water from rain and from melting of snow even in bad monsoon year, while the normal

consumption is around 100 bcm. Whereas India’s capacity to store water is mere 253 bcm due to lack of storage capacity that means most of the water is going waste. Only a small percentage of rain water is percolated into the earth and rock that comes out by way of a spring, flow through the stream developed in to a river eventually to reach to the sea. With 20 percent of world’ population the per capita availability of water, India is in 93rd position far behind with China and Pakistan as the density of population in India is 368 per square km. Whereas it is 140 per sq.km in China and 33 per sq. Km in US. As such it is necessary to protect our rivers, water bodies and natural resources instead of allowing it go waste and make the land to parch.

Though 70 percent of the globe is covered with water of which 97.4 percent is sea water, of the remaining 2.6 percent only 0.4 percent is available for utility. According to report it is less than oil reserve on earth which is considered as precious and is well protected. It is a pity that the importance we are giving to oil is not being given to protect drinking water though it is part of life saving. With the ever growing population the demand for potable water is also increasing. If the population growth has increased by 3 times the

**STRONG REASONS MAKE STRONG ACTIONS**

utilization of water has increased by six times. Cherrapunji in Assam was once getting the highest rain fall in the world with 33000 mm rain per annum which has now become considerably reduced. The country as whole is facing draught during the last couple of year with 40 percent shortage of rain reported last year.

This situation is not confined to India alone as the entire world is facing erratic weather condition. The unintended consequence of technological growth is that it has widened our equation with nature. Due to excess exploitation, nature is getting polluted, forest is sinking, desert is widening; rivers are getting dried up, consequently unable to forecast the weather condition. At this rate the forecast is that by 2025 the entire world will be facing severe draught. The UNO early in the year 2001 had cautioned the world countries of the impending draught the world has to face and accordingly advised to take steps to prevent this and reduce global warming.

India is blessed with a network of rivers. The main rivers of the Himalayas group are Indus and its tributaries, Ganga, Yamuna and Brahmaputra. These rivers are both rain and snowfed and hence continue flow is there throughout the year. But 70 percent of the water flows in to the sea. This is apart from rivers in south viz, Narmada, Krishna, Tungabhadra, Godavari, kaveri, all flows into Bay of Bengal. A small state like Kerala in South is having 44 rivers of which 41 are flowing down towards west through Western Ghats to Arabian sea and the remaining 3 flowing towards east through the state of Karnataka and Andhra Pradesh to reach to Bay of Bengal. Potential of these rivers are not utilized in its full capacity and hence goes waste. Though Kerala is the second largest rain fed state after Assam with two monsoon seasons in a year, the disadvantage is that the density of rain is too high for short duration. Consequently water cannot percolate in to the soil, that flows out

through terrain and valley with full force and the state is struggling for water for drinking and cultivation. In order to retain water on earth it is necessary that we need to adopt various method of harvesting, such as periodical ploughing the earth that makes the rain water to percolate, maintain the open well, pond and build dams to store. In earlier days every village used to have ponds that stores water for cultivation and maintain the water table. Every temple used to have large pond maintained well for various rituals. Now this situation has changed when the open land is converted to various industrial purposes or construction of the buildings or houses or grabbed by land mafias.

Lack of proper water management and protection of water bodies and environment had led to draught and global warming. Potential of the large number of rivers across the country are not utilized to its maximum capacity. The promises of the present NDA government during their election campaign about inter connecting of rivers have not been full filled yet. Consequently whenever there is a failure of monsoon and crop, the riparian states start fighting for their share of water flowing into other states. Though the country is having a federal system of government the states are fighting for their share of water that is flowing through their territory irrespective of the percentage of rain fall they are getting, forgetting the principle of co-existence as envisaged in the constitution. Though providing water for drinking and cultivation is a fundamental right, government could not fulfill this commitment. It is also a paradox that when one part of the country is suffering due to draught the other part is struggling due to persistent flood. It should be remembered that when we waste water due to mismanagement, when we spoil the environment due to our greed we should also think about our future generation and plan our growth in tune with the nature. ■

## *Legal Issues*

### **EXTRAORDINARY LEAVE IS NOT MATTER OF RIGHT : DELHI HIGH COURT**

Legal entitlement to leave is with regard to leave which is authorized, like maternity leave or child care leave. However, extraordinary leave is not a matter of right, the Delhi High Court has said. Justice Valmiki Mehta has held that the "grant of extraordinary leave is not a matter of legal right and

every employer, before granting extraordinary leave, has to balance various aspects, including the working requirement of the employer not being affected on account of leave sought by an employee."

The court made the observation while dismissing the

**MAN IS THE ARCHITECT OF HIS OWN FUTURE**

petition of a woman, appointed Assistant Director, Library, Reference, Research, Documentation and Information Service, against the order of the termination from service passed by the disciplinary authority of the Rajya Sabha secretariat.

The court in this case noted that of a total approximately 10 years of service till December 2014, the woman had been on leave for 1,917 days- around 5 ½/6 years. The woman had challenged her termination from service on account of her unauthorized absence, i.e., remaining absent from duty without any leave being sanctioned after proceeding on maternity leave.

She had argued that unauthorized absence could not lead to automatic termination of services.

#### **“Recalcitrant employee”**

The Rajya Sabha secretariat, on the other hand, contended that she was clearly a “recalcitrant employee”.

In the instant case, the woman had applied for

maternity leave of 180 days from November, 2013. The maternity leave was granted to her with leave coming to an end on May 16, 2015. Claiming that she needed to look after the baby, she applied for extraordinary leave of another 180 days which was also granted.

Thereafter, claiming that she had no family support in India, she went to the U.K. to join her husband, and again sought extraordinary leave which was not granted.

But she did not rejoin duty despite being served office memorandum. She failed to appear for enquiry.

The Rajya Sabha secretariat told the court that the detailed report discussed all aspects, and evidence led to hold the petitioner guilty of unauthorized absence from duty and conduct unbecoming of a government servant. “The present is a case of an employee wanting to do her duties at her own convenience, which cannot be permitted,” the court observed. ■

**Source: The Hindu -26.2.17**

*Judicial Verdict*

**[2017 (152) FLR 796]  
(UTTARAKHAND HIGH COURT)  
SUDHANSHU DHULIA, J.  
Writ Petition (S/S) No. 1546 of 2016  
October 4. 2016  
Between  
Smt. KAVITA PANT  
and  
STATE OF UTTARAKHAND and others**

***Maternity Benefit Act, 1961—Sections 3(o) and 3(e)—Contract Labour (Regulation and Abolition) Act, 1970—Section 21(4) G.O. Dated 12.9.2016— Maternity Benefits—Petitioner a woman employee working as Data Entry Operator on contractual basis with Uttarakhand Power Corporation Ltd.—She was denied maternity leave and maternity benefits—On ground that such benefits are not applicable in case of a contractual employee—However the woman, a contractual employee is covered under the benefit of Act—Same is liable to be paid by the principal employer, the Uttarakhand Power Corporation—As per G.O. dated 12.9.2016, the benefits of maternity leave under Maternity Benefit Act are applicable in case of contractual employee—Hence maternity leave is liable to be given to present petitioner as well. [Para 7 to 9]***

**WORKERS OF INDIA, UNITE**

## JUDGMENT

SUDHANSHU DHULIA, J.—The petitioner is a woman employee working as Data Entry Operator on contractual basis with Uttarakhand Power Corporation Ltd. through outsourcing agency called 'Uttarakhand Purva Sainik Kalyan Nigam Ltd.' (in short 'UPNL'). Since the petitioner was on her family way, therefore, she applied for maternity leave on 6.2.2016 from 8.2.2016 onwards and claims all maternity benefits, as provided under the Maternity Benefit Act, 1961, which have been denied to the petitioner on the ground that such benefits are not applicable in case of a contractual employee. Hence, she was constrained to file the present writ petition before this Court.

2. The Uttarakhand Power Corporation has filed its counter affidavit in this case, wherein the stand of the Power Corporation is that the salary cannot be given to the petitioner, since the bills have not been forwarded by the outsourcing agency UPNL to it. On the other hand, learned Counsel for the UPNL — Mr. Neeraj Garg says that they are governed by Order dated 21.7.2014 by which such benefits are not given to a contractual employee.

3. Learned Counsel for the petitioner would argue that this Court has already decided this controversy in *Smt. Indu joshi v.State of Uttarakhand and another* (in WPSS No. 826 of 2013, decided on 8.7.2013) wherein it has held that maternity leave is liable to be given to the contractual employees as well. This Court while disposing of the said matter relied upon a decision of Hon'ble Apex Court in *Municipal Corporation of Delhi v. Female Workers* (Muster Roll) and another.

4. Apart from the above, learned Counsel for the petitioner has also relied upon section 3(o) of the Maternity Benefit Act in which definition of 'woman' has been defined, which reads as under:—

"3. Definitions (o) "woman" means employed, whether directly or through any agency, for wages in any establishment."

(Emphasis supplied)

5. He further draw the attention of this Court to section 3(e) of the Act in which definition of 'establishment' has been mentioned, which reads as under:—  
"establishment" means.—

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv') an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- (iva) a shop or establishment; or
- (v) an establishment to which the provisions of this Act have been declared under sub -section (1) of section 2 to be applicable."

6. Learned Counsel for the petitioner submits that in view of the above provision of the Act, Uttarakhand Power Corporation would definitely come under the definition of 'establishment'. He further draws the attention of this Court to Clause (4) of section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads as under:—

"21. **Responsibility for payment of wages.**—

- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
- (2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of each representative to certify the amounts paid as wages in such manner as may be prescribed.

- (3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.
- (4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

7. On the basis of the above provision, not only, the woman is an 'employee' through a contractual agency is covered under the benefit of the above Act, but in a given contingency, where these benefits are not being given by the agent or contractual agency, the same are also liable to be paid by the principal employer, which in the present case is Uttarakhand Power Corporation.

8. At the fag end of the arguments, learned Counsel

for the UPNL has brought a Government Order dated 12.9.2016 before this Court, which is now part of the record as Annexure-'A', which clearly says that the benefits of maternity leave, as provided under the Benefit of Maternity Act, will also be applicable in the case of contractual employee.

9. In view thereof, this Court is also of the considered view that maternity leave is liable to be given to the present petitioner as well. The writ petition is allowed accordingly.

10. Let all the benefits of maternity leave, including salary benefit, be given to the petitioner forthwith, but definitely within a period of three weeks from the date of production of a certified copy of this order.

11. Let the certified copy of this order be supplied to the petitioner within a period of 48 hours on the payment of usual charges.

**Petition Allowed.**

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