

Indicative Model Question Paper

Professional programme

New Syllabus 2022

Labour Laws & Practice

Time Allowed: 3 Hours

Maximum Marks: 100

NOTE: Answer ALL questions

Question 1

University ABC is a newly form State University in Ambala, Haryana in 2019. The university is situated at the outskirts of Ambala city, around 25 km from main bus stand south direction. University provides residential facilities to students as well as academic and non-academic staff. For day scholar, it provides the community transport facility from University to Ambala City.

University has around 150 teaching staff in various departments and 200 non-teaching staff including bus driver, library staff and administrative staff. Teachers have formed association named 'AUTA' (ABC University Teachers Association) and non-academic staff has formed 'AUTU' (ABC University Trade Union).

Apart from specific complain, both groups have some general grounds of complain such as non-implementation of salary structure as per 7th pay commission; harsh working conditions guidelines; no pension scheme for employees and pathetic infrastructure conditions.

As per the guidelines of the University, seats for Haryana domicile are 85% reserved and 15% of seats are reserved for students from outside state. Around 300 students stay in the hostel of university and 400 students are day scholars. Students have their Union named as 'SAUA' (Student of ABC University Association).

Students have certain regular complains to the University about poor infrastructure, poor conditions of buses/transport facility, lack of basic amenities, lock of good canteen and playing grounds. University has not responded to any complain of teaching staff, non-teaching staff and student's union positively. It has not deliberated on the issue at any forum showing their non-sensitiveness to the complaints.

On 15 January 2022, while commuting from Ambala City to University in early hours, the University bus met with an accident. Driver of the bus along with 2 students suffered injury. Maniram, the driver due to accident lost his left eye and broken left hand. Students with minor injuries are safe.

Instead of making proper inquiry to the issue, the university administration issued a show cause notice of termination to Maniram, saying that he was driving bus in inebriated conditions and therefore, he alone is responsible for the accident.

Maniram is not the member of the 'ABC University Staff Union' on the day of accident and notice. His reply to the notice of termination was not taken into consideration on this ground. Realizing the injustice to Maniram, the AUSU, AUTA and SAUA joined together and gheraoed the administrative head of university for 2 hours on 30 January, 2022. After the intervention of enforcement agency, the matter was sorted out on that day. However, these three groups continued with strike in the University.

On the basis of above facts, please advise on the following issues:

- a) Whether the dispute as mentioned above will be counted as an 'industrial dispute'?
- b) Whether the University is an 'industry'?
- c) Whether the faculties of university are 'workmen'?
- d) Whether an individual dispute can be named as industrial dispute?
- e) Whether students' union can raise an industrial dispute?

(5 marks each)

Question No. 2

- (a) The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan*, 1997 6 SCC 241: AIR 1997 SC 3011 ("Vishaka Judgment").

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted by the Ministry of Women and Child Development, India in 2013 – after 16 years of the Supreme Court judgment in the case of *Vishaka & Ors. vs. State of Rajasthan & Ors.* The Act came into force w.e.f. 9th December, 2013.

In view of the above, highlight the importance of 'Vishaka Judgement' in enactment of 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013'.

(10 marks)

- (b) *Shri Bankey Bihari Associates, Company Secretaries (Firm)* is a partnership firm with four partners having presence in Mathura. Each of the partners is the fellow member of the Institute of Company Secretaries of India. The Firm is also having some management trainees and paid employees and total staff strength is 60 (20 Management Trainees and 40 Professional employees).

Based on the above facts, discuss whether the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH) is applicable to the office of Company Secretaries?

(10 marks)

- (c) *Hotel Tushar* is managed by a firm employing more than 100 employees and covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Some of its partners started a new restaurant in the premises registering the restaurant as a new unit as per the applicable State enactment. The restaurant employed 15 employees and the management of restaurant took a stand that the restaurant is a different establishment and is not covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Will it succeed?

(5 marks)

Question 3

- a) Read the case below and answer the questions at the end:

The case is relating to Compensation under Section 3 of Employees' Compensation Act. In the matter the appeal was filed by the employer against the judgement of the Workmen Compensation Commissioner. The material facts which have given rise to this appeal is briefly stated mentioned below:

Kumar (deceased) who was employed as a driver on a truck of Mr. Harsh Vardhan, owner of M/s Nirankari Trading Company (the appellant) which used to carry petrol tank. The deceased reported to the appellant that the tank was leaking upon which the appellant got the tank partly filled with water at night and ordered the deceased to check it on the next morning. On the next morning i.e.,

on 10th January, 2022, the deceased entered the tank to see from where it leaked and lighted a match stick as a result of which it caught fire and the deceased received burns due to which he succumbed subsequently.

The evidence produced on behalf of respondent was that the match box supplied to the deceased by the appellant. But this fact was denied by the appellant in his deposition and in the opinion of the learned Commissioner it was doubtful that the appellant had given the match box to the deceased though no reasons are given for the aforesaid conclusion. Learned Counsel for the appellant contends:

- (i) That in the present case the accident did not arise out of and in the course of the deceased's employment and it occurred due to the 'added peril' that is the lighting of match stick within the petrol tank by him.
- (ii) That the Commissioner ought to have held the Insurance Company i.e., respondent insurance is also liable for compensation.
- (iii) That after remarriage respondent widow was not entitled to claim compensation because she no longer remained a dependent.

In order to appreciate the argument, it would be useful to reproduce the relevant parts of Section 3 of the Employees' Compensation Act, 1923. If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation.

Provided that the employer shall not be so liable:

- (a) In respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;
- (b) In respect of any injury not resulting in death, caused by an accident which is directly attributable to:
 - (i) The employee having been at the time thereof under the influence of drink or drugs or
 - (ii) The willful disobedience of the employee to an order expressly given or to rule expressly framed, for the purpose of securing the safety of employee, or
 - (iii) The willful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

On the basis of the above facts, answer the following:

- (i) Whether the accident of employee is in course of employment?
- (ii) Whether the employer can take plea of 'added peril' in his defense? Is the employer liable to pay compensation?
- (iii) Whether dependents will succeed in recovering compensation from the employer?
- (iv) Whether a widow become debarred from claiming compensation? On account of her remarriage?

(5 marks each)

- b) New India Co-operative Society (NICS) is engaged in the packing and selling of pulses and has employed 42 workers belonging to the nearby villages within the radius of 20 kms. The NICS is registered with the Registrar of Co-operative Society under the Co-operative Societies Act, 1912 and is having its works/administrative office in Chandigarh. The NICS is providing salary to its

workers, but is not deducting any Provident Fund. One day, Sandhya, a female worker of the NICS, made a complaint to the Provident Fund Department of that area for not deducting the Provident Fund from her salary by the employer. Consequently, the NICS received a notice from the Provident Fund Department. The NICS has approached you for the legal advice. Please advise and provide justification.

(5 marks)

Question No. 4

The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely: - (a) industrial relations; (b) wages; (c) social security; (d) safety; and (e) welfare and working conditions.

With the objective of strengthening the safety, security, health, social security for every worker and bringing ease of compliance for running an establishment to catalyse creation of employment opportunities/generation and as per the recommendations of the 2nd National Commission on labour, Ministry of Labour and Employment has taken steps for codification of existing Central labour laws into 4 Codes by simplifying, amalgamating and rationalizing the relevant provisions of:

- **The Code on Wages, 2019-** To give right of minimum wages to all the workers
- **The Occupational Safety, Health and Working Conditions Code, 2020** - To provide better and safe environment along with occupational health and safety to workers at the work place
- **The Code on Social Security, 2020** - to secure the right of workers for insurance, pension, gratuity, maternity benefit etc.
- **The Industrial Relations Code, 2020-** To safeguard the interests of Trade Unions as well as the workers

The Central Government amalgamated 4 laws in the Wage Code, 9 laws in the Social Security Code, 13 laws in The Occupational Safety, Health and Working Conditions Code, 2020 and 3 laws in the Industrial Relations Code.

The Labour Code is a means to consolidate various statutes into a pruned and uncomplicated form. The amalgamated form of multiple statutes thus obtained is called a labour code. This operation is done with a view to have a unified law which can be understood and implemented with ease.

On the basis of the above facts, answer the following:

- (a) Briefly explain the salient features of the Code on Wages, 2019.
- (b) Discuss floor wages and minimum wages under the Code on Wages, 2019.
- (c) List out the Labour legislations that are amalgamated under the Occupational Safety, Health and Working Conditions Code, 2020
- (d) Social Security Code consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors. Briefly explain the salient features of Code on Social Security, 2020.
- (e) The Industrial Relations Code, 2020 provides a broader framework to protect the rights of workers to make unions, reduce the friction between employers, and workers and provide regulations for the settlement of industrial disputes. Briefly explain the salient features of Industrial Relations Code, 2020.

(5 marks each)