

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 12

NOTE : *Answer ALL Questions.*

1. Case Study :

Arihant Textiles Ltd. (ATL) is a company engaged in the business of manufacturing of Bed Sheets, Cushion Covers, Towels, Curtains and like items. The company is having its Corporate Office in Mumbai and works office at Solapur.

After purchasing the cotton seeds, the cotton is processed by the company to manufacture yarn. The processing method involves cleaning, picking, carding, combing, drawing, roving, and spinning. The cotton fibers are separated from the seeds in cotton ginning. The compressed fiber is unraveled using a mixing and blowing machine, cleaned, and processed into sheet-shaped to begin the spinning process.

The machinery section where the cotton seeds are segregated and cleaned through machines is very much hazardous. The vapour of cotton gets spread in the hall which directly affects the respiratory system of human being. Although a partition curtain (between the ginning machine and outer tray for storage of cotton balls) is put in place, however the workers are advised to keep a double folded mask on their face (covering nose, mouth and ear) to prevent the inhalation of cotton particles.

The company hires the workers as per the requirement. The cotton is planted from March to June and harvested from August to December. Since during the off season the supply of raw cotton seeds are short, accordingly the less number of workers are hired and in peak season the number is increased. However, on an average 200 to 225 workers usually works in the factory throughout the year, which includes both the gender. The factory do not have separate wash room and rest room facility for the women, where the women workers may feel comfortable during the lunch hours and may feed to their newborn child.

For unskilled labour who work in ginning section, the company usually hires women of the local village. Around 125 women have been provided employment in the factory. Most of the women are required to do the work near the cotton ginning machine which remains in motion, while removing cotton balls from the cotton-openers. The machine also requires periodical cleaning and oiling, which are also being performed by women workers.

Vikrant, is the Supervisor in the factory. He resides in village Vadapur which is around 40 km away from Solapur. He used to travel on bike from his hometown. His wife, Ms. Chanda is the Sarpanch in village Vadapur. Ms. Parvati is a domestic helper in the house of Ms. Chanda. Ms. Chanda on and often misbehaves with Ms. Parvati and sometimes, when the domestic work is not according to the expectation of Ms. Chanda, she speaks abusive words and insults Ms. Parvati in presence of neighbors. One day, some village people visited Ms. Chanda's house to discuss the village development issue. Ms. Chanda called on Ms. Parvati to serve water and tea to the villagers, but Ms. Parvati was busy in feeding her 4 months old baby, so she requested to wait for some time. Annoyed with this, Ms. Chanda passed on sexually coloured remarks on Ms. Parvati. Ms. Parvati, felt very

: 3 :

ashamed. In the evening, Ms. Parvati told this incident to Kailash, her husband. Kailash on the advice of an Advocate, decided to take an action against Ms. Chanda under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

A group of some women workers working in the factory, requested Vikrant to provide some job to their children. Vikrant talked to the management and got the verbal approval to hire 10 children in the age group of 12 to 15 years. Out of 12 children, 2 were female children. During the peak season, Vikrant instructed all the workers to do work for extra hours upto 9 P.M. For doing the work for extra hours the management will pay the overtime. These instructions were also applicable on female workers as well on child workers.

However, increase in the working hours, did not result into more output, as expected. There was a considerable gap between the work load and the available workhours. So, the management decided to give the labour-oriented work to an outside contractor. Contractor will provide his labour force and payment will be made directly to the Contractor. It will also avoid the groupism and will also increase the productivity and ultimately the Contractor will be responsible to give targeted output at a pre-fixed cost of wages. Accordingly, the company management contacted M/s Akshay Manpower Suppliers (AMS), for supply of workforce and to undertake the supply of entire labour force.

The M/s Akshay Manpower Suppliers (AMS) took over all the workers of the Arihant Textiles Ltd. (ATL) on its payroll as per the terms and conditions set out by the AMS. The workers were asked to give certain parameters of output, else will loose their jobs.

Arihant Textiles Ltd. (ATL) in the meeting of its Board of Directors, decided to enter business of manufacturing and selling of hosiery items. For this the company wants another factory building. Since in the existing factory premises, some vacant land is available, so the company decided to construct a factory structure on it. It took the necessary permission for construction of the site and engaged M/s Jasraj Constructions (A Civil Contractor) for the civil work. Around 100 workers of the Contractor started the work of construction at Arihant Textiles Ltd.

Considering the above case, answer the following questions :

- (a) What are the obligations on the part of the factory occupier to take measures with regard to health, safety and welfare measures specifically for the women workers under the Factories Act, 1948 ?

(8 marks)

- (b) Kailash on the advice of an Advocate, decided to take action against Ms. Chanda under the POSH Act for misbehaving with her wife Ms. Parvati. It is a common belief that POSH Act comes into play only when there is a sexual harassment of woman at workplace. In the given case, there is no office/workplace and there is no harassment of woman by any man. Hence, the provisions of the POSH Act shall not be applicable. Do you agree with this contention ? Substantiate your answer.

(8 marks)

- (c) (i) Whether hiring of children in the age group of 12 to 15 years is permissible under the law ?
- (ii) What are the working hour conditions prescribed for employment of children ?
- (iii) Whether the working hours for all the workers can be increased or is there any restriction for female workers ?

(2+3+3=8 marks)

: 5 :

(d) M/s Akshay Manpower Suppliers (AMS) entered into the contract with the Arihant Textiles Ltd. (ATL) for supply of labour force on contract basis.

(i) In the new changed scenario who shall be regarded as the Principal Employer ?

(ii) What are the provisions relating to the registration of establishment ?

(iii) What is the effect of non-registration of establishment ?

(2+3+3=8 marks)

(e) M/s Jasraj Constructions sent around 100 workers to do the civil work for Arihant Textiles Ltd. In light of this :

(i) Whether these building workers are required to get any registration with Registration Officer ?

(ii) Arihant Textiles Ltd or Jasraj Constructions, which one, shall be termed as 'Establishment' ?

(iii) Whether registration of establishment is different from the registration of building worker ?

(3+2+3=8 marks)

2. (a) Ms. Chesta after passing BE got a job in Bombay Datamatics Ltd (an IT Company). She was placed in Kalyan Office of the Company. In Kalyan Office, Rohan was also doing job as a Software Consultant.

After sometime, Rohan and Ms. Chesta came closer. They took a flat in Kalyan area and started living in a 'live-in-relationship' from May 2022. However, they did not disclose their relationship in the Office nor to any of their family/relatives. Ms. Chesta, on the request made by her, was allowed to do the office work from home. (Work from Home).

In December, 2022, Ms. Chesta undergone a miscarriage. She applied for maternity leave but the company denied to sanction the paid leave quoting the reason that as per its record, Ms. Chesta was unmarried. The HR official of the Company, in a mail to Ms. Chesta, informed that there is no provision/policy of the Company to grant maternity leave on account of miscarriage/pregnancy to an unmarried woman. Aggrieved to this Ms. Chesta approached a lawyer.

- (i) Whether Ms. Chesta will get the benefit of maternity leave as described under the Maternity Benefit Act, 1961, inspite of the fact that she is not married (i.e., living in 'live-in-relationship') ?
- (ii) What maternity benefits can be claimed by Ms. Chesta ?
- (iii) Whether contention of the Company is right in denying the maternity benefit to Ms. Chesta or the Company will be held liable for the contravention of the provisions of the Maternity Benefit Act, 1961 ?

(2+2+2=6 marks)

- (b) Bhima and his wife Ms. Kamla are doing labour work in Progressive Construction Company Ltd. Bhima and Ms. Kamla are being paid ₹ 500 and ₹ 400 per day for their labour work. Like Bhima and Kamla, there are many other workers, working in the Construction Company and the Company is following the practice of paying less wages to the female worker in comparison to male workers.

Kamla and many more female workers raised their voice before the management to give wages at par with the male workers. To handle this situation, the management reduced the wages of the male workers and kept it as ₹ 400. Now irrespective of any gender, the wages of both the gender are ₹ 400 per day.

: 7 :

- (i) Whether reducing of the wages of the male workers to follow the principle of 'Same work–Same pay' is justified ? Give your answer in light of the provisions of the Code of Wages, 2019.
- (ii) If in the above case, instead of reducing the wages of the male workers, the Company argues that the work assigned to the male and female are entirely separate and not the same work, hence there is difference in wages. In such circumstances, which Authority shall decide the dispute, whether the work allocated to male and female workers are different or same ?
- (iii) Whether Bhima and Ms. Kamla are to be treated as 'Employee' or 'Worker' of the Construction Company ? Explain.

(2+1+3=6 marks)

3. (a) Radha is engaged in providing services as domestic helper in a residential society. She used to serve in 10 flats in a day. However, she is not happy with the mal-practices played by the flat owners. Some of the issues were of not giving paid leave, timely payment of the services rendered, payment of gift/bonus on festivals, medical and emergency help etc. She wants to form a trade union to protect the interest of the domestic helpers and approaches you to seek guidance for formation of a trade union. Describe whether Radha can initiate the formation of trade union ? If yes, what procedures has to be complied with by her ?

(6 marks)

- (b) Safe Golden Transport Company Ltd. (SGTC) is engaged in providing transportation of goods from one place to another. Its area of operation is mainly within Rajasthan. The SGTC has 50 trucks and 300 staff members including the drivers, helpers, clerks

and officers. The employees and workmen are being paid salary on a monthly basis, which is paid on the last day of the month. Apart from the salary, the company also pays bonus on every Diwali festival, which is usually one month's salary. However, the bonus for the Diwali time for the year 2022 could not be paid by the company on account of losses. Some of the truck drivers stopped the work and remained on unauthorized leave for a period of one week. The employer accordingly deducted one week's salary of the concerned truck drivers. Aggrieved from this, the employees made a complaint to the Regional Labour Commissioner for non-payment of wages to the workers and employees.

- (i) Whether SGTC, a transport company comes under the meaning of the industrial establishment as per the Payment of Wages Act, 1936 ?
- (ii) Whether non-payment of bonus on Diwali time by the SGTC comes under the definition of wages ?
- (iii) Whether the deduction of one week's salary by the employer is justifiable ?

(2+2+2=6 marks)

4. (a) Utkarsh, Alisha and Eknath are friends and are fellow members of the Institute of Company Secretaries of India (ICSI). They decided to engage in practice of CS Profession, so they all resigned from their respective services and formed a Limited Liability Partnership under the name and style of UAE and Associates LLP. (UAE). The UAE also engaged three CS Students as Apprentice on a monthly stipend as per the norms prescribed by the ICSI.

- (i) Whether UAE can be treated as 'Industry' within the meaning of Industrial Disputes Act, 1947 ?
- (ii) Whether the student undergoing training as Apprentice can be treated as 'Workers' within the meaning of Industrial Disputes Act, 1947 ?

(3+3=6 marks)

: 9 :

(b) Khushi Ram is having a farm land near Sri Ganganagar (Rajasthan) admeasuring 10 hectares. He cultivates seasonal crops on it, like wheat, maize etc. For doing farm work, the labours have been engaged. Ten labours are permanent, which get the compensation on monthly basis while others are temporary which are hired as per the requirement, during the crop season. During the last 12 months Khushi Ram hired 25 such labours. The temporary labours continue to be hired for one full crop season, the period of which runs around 3 to 4 months.

- (i) Which of the Labour Act shall be applicable in the given case ?
- (ii) Whether Khushi Ram is required to get the registration under such Act ?
- (iii) If Khushi Ram sold this farm land to another person named Mahesh, whether Mahesh can continue with the old registration ?

(2+2+2=6 marks)

5. (a) Makrana is a well-known name for its fine quality marble. It is regarded as the oldest place in India with marble mines. The State Government has its own marble mines in the area and hundreds of labours, skilled and unskilled are engaged in it. The labours of marble mines were demanding for wage revision since it was not revised for the last 10 years. The Union Leader raised a Charter of Demands for the wage revision before the management and informed to go on strike, if the demands were not adhered to within a reasonable time.

Based on the above facts, answer the following questions :

- (i) Whether the Marble Mines comes under Scheduled Employment under the Minimum Wages Act, 1948 ?
- (ii) Who shall be the Appropriate Government Authority for revision of the wages ?
- (iii) What shall be the procedure for revising the minimum wages ?

(1+1+4=6 marks)

- (b) Vinayak Airlines runs its aircrafts between the metro and major cities of India. The air route of Mumbai to Chennai named as VA-471 was on its scheduled flight on 10th August, 2023. Suwas is the captain of the VA-471 and 3 other persons are crew members. While running on the Chatrapati Shivaji Maharaj International Airport, Mumbai for taking off, the front tyres of the aircraft burst on the runway and the aircraft slipped off from the runway. The pilot died on the spot, one crew member badly injured and some passengers also injured.

What is the provision of compensation to legal heirs of the captain and crew members ?

(6 marks)

6. (a) (i) Which of the Act provides an integrated need based social insurance scheme, that protects the interest of workers in contingencies such as sickness, maternity and employment injury, temporary or permanent physical disablement, death due to employment injury resulting in loss of wages or earning capacity and guarantees reasonably good medical care to workers and their immediate dependants. Also discuss the applicability of such Act.
- (ii) Explain the concept of 'Theory of Notional Extension of Employment' in case of deciding the 'Employment Injury'. Do you agree that there should be a nexus or casual connection between the accident and employment.

(2+4=6 marks)

: 11 :

- (b) Examine the accountability of employer for payment of gratuity in the following cases, along with reasons thereof :
- (i) Ms. Sulabha is working as professor in a private engineering college. Every year she gets a contractual appointment letter in the beginning of the academic year and the services comes to an end at the end of the academic year. Fresh appointment is issued after following the due process of interview. Sulabha after serving 10 years in this manner, joined another college. She claimed gratuity for serving in the previous college.
 - (ii) Ankur is a partner in a firm of Company Secretaries. After 15 years of his association with the CS Firm he decided to leave the firm and voluntarily expressed his willingness to resign, which was accepted by all other remaining partners. Ankur now wants to claim gratuity for the period he has served in the CS Firm.
 - (iii) Ms. Shravika joined a bank as Assistant Manager. Nearly after a year of service, she met with an accident and died. Her legal heirs claimed the gratuity.
 - (iv) Vikram Singh was terminated from the service of an insurance company for an offence involving moral turpitude in the course of his employment. He had served in the company for a continuous period of 10 years.
 - (v) Ms. Alia retired from a bank after serving a continuous period of 30 years. She was designated as Assistant General Manager in the Bank and was also provided a bank's flat, in Mumbai. She did not vacate the flat after retirement due to her mother's illness and requested the management to allow her to

: 12 :

continue for a further period of one year. She was ready to offer the rent after retirement date, till she continues the possession of the flat. The management forfeited her gratuity and informed to pay only after vacation of the bank's flat.

- (vi) Shubham Singh is a local union leader, working as a clerk in a bank branch. He is also an active member of a leading political party. During 'Bharat Band' agitation, the leaders of that political party forcefully entered in to the branch premises and broke down the furniture and fixtures in the branch. Shubham Singh was also actively involved in creating violence and breaking the assets of the bank branch. All these incidents were captured by the CCTV of the branch. The branch manager submitted a detailed report of the incident and involvement of Shubham Singh. As a result, the disciplinary committee conducted examination and terminated Shubham Singh from the services of bank. The bank management also withheld the payment of his gratuity.

(1 mark each=6 marks)

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