

*Roll No.***OPEN BOOK EXAMINATION***Time allowed : 3 hours**Maximum marks : 100**Total number of questions : 4**Total number of printed pages : 8***NOTE :** *Answer ALL Questions.***1. Case Study**

Air Noise Company Private Ltd. was suffering continuous losses as there was no work for employees for a long period. Considering the condition that there is no sufficient work for many of the employees, the company retrenched its 297 employees.

The retrenchment was carried out under Section 25F of the Industrial Disputes Act, 1947 for three categories of employees namely Attender, Transmission and Engineering. The Company issued notices notifying retrenchment of 297 employees and the retrenchment letters were sent to the last known addresses of the employees by registered post citing reasons for retrenchment. The retrenchment letters were uploaded on the website of the Company and were pasted at the prominent places of each office of the Company. Each retrenchment letter had details of payment of notice pay and retrenchment compensation with the basis of calculation and the notice pay and retrenchment compensation were transferred in the bank account of each of the retrenched employees. The retrenched employees were requested to approach the company along with the relevant forms in case of any inadvertent calculation error. The Company also notified the Appropriate Authority in the prescribed form along with necessary formalities in compliance of Section 25F of the Industrial Disputes Act. The Company also displayed the notice giving the Seniority List of three categories of employees in compliance with Section 25G read with Rule 77 of the Industrial Disputes Act and it has strictly followed the principle of last come first go in the process of retrenchment. In

the retrenchment letters, it was categorically mentioned that in case of re-employment the Company shall comply with Section 25G read with Rule 78 of the Industrial Disputes Act, 78 retrenched employees have accepted their retrenchment and have also withdrawn their gratuity amount.

The Employee Union of the Company has filed writ petition challenging the retrenchment of 297 employees on various grounds that the Company is amenable to writ jurisdiction as it satisfies the public function test.

- (a) Decide on the maintainability of the writ petition in brief. (Cite relevant case laws also, if applicable).

(5 marks)

- (b) The scope and ambit of Section 2 (oo) relating to retrenchment is well explained in the case of Santosh Gupta vs. State Bank of Patiala (1980) Lab.I.C.687 SC), discuss.

(5 marks)

- (c) Whether the labour court or tribunal, when adjudicating a matter, can go beyond the scope of its reference under the Industrial Disputes Act ?

(5 marks)

- (d) Some of the workers of a company indulged in cessation of work in the support of the demands of workmen belonging to other employer. Whether such cessation of work will amount to a strike ? Discuss its legal validity.

(5 marks)

- (e) There are certain establishments to which scheduled Act applies, are exempted from furnishing or maintaining of returns and registers required under certain labour laws. Name and define these establishments. Also discuss the provisions relating to exemption from furnishing or maintaining of returns and registers by small and very small establishments.

(5 marks)

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2. (a) Mihir Sen was in service of Sona Motors India Private Ltd (Sona Motors) during the period 2006 to 2014. Sona Motors decided to post him on a foreign assignment with its group company, Mona Motors (Japan). Accordingly, an Agreement of Assignment of Contract of Appointment was executed between Sona Motors and Mihir Sen, by which his services were placed with the Host Company, Mona Motors (Japan) w.e.f. 1st March 2014 wherein Mihir Sen continued to work in terms of the said agreement upto 25th June 2022 when he came to be relieved by the host company, consequent to the resignation tendered by him on 5th April 2022.

Sona Motors declined to treat Mihir Sen's connection with Sona Motors after he was assigned to the Host Company for the purpose of payment of Gratuity.

Decide with the help of case law, whether transfer of Mihir Sen to another company under same management, i.e., Mona Motors (Japan) will be considered as continuity of service for payment of Gratuity ?

(5 marks)

- (b) A complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was filed by Ms. Shanti against Om, who was working as the General Manager of the Company in Mumbai. The complaint was referred to the Internal Complaint Committee (ICC), constituted by the Company. The ICC, upon analysing the complaint, came to the conclusion that the relationship between Shanti and Om were based on personal grounds with mutual consent and that the allegations of sexual, emotional and mental harassment were not substantiated by Shanti.

Accordingly, the complaint against Om was rejected by the ICC. However, the ICC observed that the behaviour of the parties had been inappropriate and unbecoming of Officers/Employees of the Company and accordingly recommended the Competent Authority to take suitable action against the Parties, as deemed fit.

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Based on the report from ICC and certain other facts which the Company had ascertained out of the various communications between Om and Shanti, a charge-sheet was served upon Shanti, under Employees' (Discipline & Appeal) Regulations of the Company. Aggrieved by the Charge Sheet, Shanti preferred a petition :

- (i) Decide the validity of recommendation by ICC and consequent charge sheet to Shanti.

(5 marks)

- (ii) 'Moral Policing' is not the job of the Management or of the Internal Complaint Committee. Discuss with the help of any case law.

(5 marks)

- (c) Prasanna Kumar, the respondent was appointed as a Personnel Officer of the appellant company. His services were confirmed after satisfactory completion of probation. It was provided in the terms of employment that the services of the respondent could be terminated with a month's notice or salary in lieu thereof. On 10th October 2020 the employment of the respondent was terminated by giving a month's salary in lieu of notice. The respondent challenged the legality and validity of the order of termination by filing a writ petition before the High Court.

The respondent contended that he was assured at the time of appointment by the General Manager that he would be promoted as Assistant Manager (Personnel) after confirmation and his pay would be fixed accordingly. But after confirmation, his salary was not increased as per the assurances given. Since he insisted for implementing the assurances, his employment was unjustly terminated on 10th October, 2020. The respondent also held a contention that by virtue of his appointment as Personnel Officer he had to look after the welfare of the labours employed in the factory. Accordingly, his appointment must be considered to be statutory appointment under the Provisions of Factories Act, 1948. In view of this, as per the Act and rules made there under termination cannot be made without the concurrence of the Labour Commissioner. As such the said termination is illegal and void.

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Answer the following questions based on the above facts :

- (i) Whether the appointment of Prasanna Kumar could be considered as Labour Welfare Officer and termination thereafter as invalid ?

(5 marks)

- (ii) What are the statutory provisions for appointment of Labour Welfare Officer ? Have they been complied with in this case ?

(5 marks)

3. (a) The relevant provisions of the Conduct, Discipline & Appeal Rules (CDA Rules) of the company, contain a deeming provision of continuation of employment to enable dismissal from service even post superannuation. The subject CDA Rules provide that inquiry could be held in the same manner as if the employee had continued in service and the appropriate major and minor punishment commensurate to guilt can be imposed including dismissal and in case pecuniary loss had been caused, that can also be recovered.

In the above given circumstances, decide whether an employer is permitted to withhold gratuity during the pendency of disciplinary proceedings against a superannuated employee ?

(5 marks)

- (b) Ramu was working as a driver. Once driving his Bus along with conductor on his assigned route during peak traffic hours, when driving remains a stress, Ramu informed the conductor that he is feeling chest pain and unable to run the bus. Immediately the Conductor took Ramu to Government Hospital, but the Medical Officer declared him dead due to heart attack.

Whether the death of Ramu caused due to stress from work can be considered to be death of an employee due to injury by accident arising out of and in the course of employment ?

(5 marks)

- (c) As to the matters relating to payment of wages, its fixation and enforcement, who can file an appeal under the Code on Wages, 2019 and state the time limit for preferring an appeal to the appellate authority.

(5 marks)

- (d) As a compliance officer, the Company Secretary has to ensure various provisions under Labour Codes. Discuss.

(5 marks)

- (e) PTR, an industrial unit in Ludhiana was established in the year 2002 under the Companies Act. They are into the business of manufacturing electronic goods and allied products and have 226 employees. PTR is discriminating employees in wage payment based on the gender. What are the provisions relating to equal remuneration in Code on Wages, 2019 ? Discuss.

(5 marks)

4. (a) Can a court interfere in respect of a notification fixing the minimum wages ? Discuss citing relevant case laws.

(5 marks)

- (b) Rohit was a regular conductor working with the State Road Transport Corporation (SRTC). He died on 18th October 2013 while in service. Krishna, son of Rohit was a minor at that time. On attaining the age of majority i.e. 18 years on 10th July 2018 and having acquired the educational qualification of high school and intermediate, his mother, moved an application seeking compassionate appointment for him under the State Recruitment of Dependents of Government Servants Dying in Harness Rules. Vide letter dated 19th October, 2020, the SRTC informed that in connection with her application for compassionate appointment, the corporation has decided to appoint Krishna on preferential basis as a contract conductor and he was requested to deposit a security amount of ₹ 10,000/-. Krishna submitted the security deposit and entered

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into an agreement with the SRTC on 12th December 2020 to function as a contract conductor. During his service as contract conductor, he was found guilty of misconduct. As he was a Contract Conductor, his services were terminated on 30th January, 2025 without holding any disciplinary enquiry.

Whether the services of a contract employee be terminated without holding any disciplinary enquiry ?

(5 marks)

- (c) XYZ is a registered partnership firm running a small readymade garment's shop at Raipur, which was registered under M.P. Shops and Establishment Act, 1958. On 12th March, 2021, establishment of the firm was inspected by the Insurance Inspector, E.S.I., Raipur. Considering 17 persons employed by the firm for the work of alteration of cloth and ironing in the premises of shop, the ESI Inspector reported it as "manufacturing process" as per the definition of E.S.I. Act, 1948. ESI Authorities vide their order dated 27th April 2021 held that the shop of the firm comes under the coverage of provisions contained in E.S.I. Act, 1948, as the premises of the firm comes under the definition of factory as per Section 2(12)(a) & 2(12)(b) of the E.S.I. Act, 1948.

Decide whether the activity of selling of readymade garments and its alteration can be considered as "manufacturing" under the definition of E.S.I. Act 1948 and whether the premises of the shop of the firm XYZ comes under the definition of "factory" as per E.S.I. Act 1948 ?

(5 marks)

- (d) The need for protecting and safeguarding interest of labour as human beings has been enshrined in various Articles of Constitution of India giving an idea of the conditions under which labour had to be for work. Accordingly, various labour laws ensure the right to life and personal liberty and right against exploitation to labours. Discuss briefly.

(5 marks)

- (e) Popsco Ltd. is a Company engaged in manufacture and sale of textile goods, falling within the purview of Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The workforce of the Company is around 1000, including two foreign Nationals. The Company was remitting the provident fund contribution in respect of those foreign nationals also. However, since the said two workers happened to be foreign nationals, the company, Popsco Ltd. was under the impression that it was enough if the company pays the contribution on wage ceiling of ₹ 15,000/- alone. The company had adopted this approach in view of Paragraph 2 (f) of the Employees' Provident Fund Scheme, 1952, which defines an excluded employee as an employee whose pay at the time exceeds ₹ 15,000/- per month.

The Regional Provident Fund Commissioner (RPFC) brought to the notice of the Company that it ought to have remitted the contribution based on their entire pay of these two employees also and therefore, the Company has erred in remitting contribution on the wage ceiling of ₹ 15,000/- alone. Based on the notice by RPFC, the Company not only made good the shortfall in the contribution, but also the interest thereon. However, RPFC wanted to penalize Popsco Ltd. under Section 14B of the Act.

Discuss with respect to the legal provision and offer your comments.

(5 marks)

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