



# **DEVELOPMENTS IN CORPORATE LAW AND LABOUR LAW**

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IN DECEMBER

# 2018

## ABOUT ACUITY LAW

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic lawyers led by Souvik Ganguly and Gautam Narayan, who have deep and diverse experiences in their chosen areas of practice. We have advised Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors and government agencies in various transactions in and outside India.

Acuity Law takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided into two departments.

The Corporate practice is led by Souvik Ganguly and the Disputes practice is led by Gautam Narayan.

As part of the Corporate practice, Acuity Law advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency Law;
- Private Equity and Venture Funding;
- Employment and labour laws
- Commercial and trading arrangements; and
- Corporate Advisory

As part of the Disputes practice, Acuity Law under the leadership of Gautam Narayan advises and represents clients on domestic and cross - border:

- Civil disputes;
- Criminal law matters; and
- Arbitration matters

Acuity Law actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law, please visit our website [www.acuitylaw.co.in](http://www.acuitylaw.co.in) or write to us at [al@acuitylaw.co.in](mailto:al@acuitylaw.co.in).

## INTRODUCTION

This newsletter covers developments with respect to corporate and labour laws during the month of December 2018.

In relation to corporate laws, we have covered case laws with respect to professional misconduct under the Chartered Accountants Act, 1949; illegal transfer of shares; amalgamation petitions; and oppression and mismanagement petitions. Further, we have also covered amendments to the Companies (Cost, Records and Audit) Rules, 2018 and the Companies (Amendment) Bill, 2018.

In relation to labour laws, we have covered a Supreme Court judgement with respect to accident compensation under Workmen's Compensation Act, 1923; Contract Labour (Regulation and Abolition) Central (Amendment) Rules, 2018; incorporation of the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2017 and its corresponding 2018 rules.

Please see below summaries of the relevant developments.

### 1. COUNCIL OF INSTITUTE OF CHARTERED ACCOUNTANTS v. GURVINDER SINGH , 16 NOVEMBER 2018

#### CORPORATE LAW

The Hon'ble Supreme Court (**SC**) in its judgment dated 16 November 2018 set aside an order of the Delhi High Court which stated that a Chartered Accountant (**CA**) cannot be held professionally accountable for misconduct under Schedules I and II of the Chartered Accountants Act, 1949 (**the Act**) while not acting in his professional capacity. The SC held that as per Schedule I Part-IV sub-clause 2 of the Act, a CA would be liable for acts of misconduct not done in his professional capacity, if the Disciplinary Committee (**DC**) finds that the acts bring disrepute to the profession irrespective of whether they were related to his professional work and remanded the case back to the Delhi High Court.

Respondent No. 1 in the present case is a CA against whom a complaint was filed by the Council of Institute of CA in relation to the sale of 100 shares that were transferred to his own name. The DC took up the case despite a settlement between the two parties and found the conduct of Respondent No. 1 derogatory in nature following which an application was filed in the High Court for his suspension for a period of 6 months. The High Court arrived at the conclusion that since the acts of the CA were carried out in his personal capacity, they could not be deemed to be professional misconduct on the part of the CA and hence no penalty was levied. The case was brought before the SC on an appeal.

The SC's decision was as follows:

- The SC while reiterating section 21(3) of the Act stated that the Director (Discipline) may place the matter before the Board of Discipline if the misconduct belonged to one of the categories mentioned under Schedule I, or before the DC if the misconduct was mentioned in either Schedule II or in both the Schedules.
- The SC while reiterating Schedule 1 Part-IV sub-clause 2 stated that the CA may be held guilty of misconduct if his actions bring disrepute to the profession or the Institute irrespective of whether his actions were related to his professional work.

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- The SC held that the DC had found Respondent No. 1 guilty of acts which although were not in his professional capacity but brought disrepute to the profession as the DC was entitled to so do under Schedule 1 Part-IV sub-clause (2) of the Act.
- Therefore, the SC set aside the decision of the High Court for not taking into consideration the provisions of the Act and remanded the case back to the High Court to be decided afresh.

**2. SAS HOSPITALITY PVT. LTD.  
& ANR. V. SURYA  
CONSTRUCTIONS PVT. LTD.  
& ORS., 16 OCTOBER 2018**

The Hon'ble High Court of Delhi (**HC**) in its order dated 16 October 2018 rejected SAS Hospitality Pvt. Ltd.'s (**Plaintiff**) petition seeking that the allotment of shares in favour of the Defendant Nos. 5 to 9 who are the shareholders of Surya Constructions Pvt. Ltd. (**Defendant Company**) be declared null and void.

The Plaintiff had filed a suit in relation to the allotment of shares in the Defendant Company. The Plaintiff held 99.96% shares in the Defendant Company, but since Defendant Nos. 5 to 9 were allotted shares of the Defendant Company in an illegal manner as contended by the Plaintiff, its shareholding stood diluted to 21.44%. The HC examined the Defendants' contention that with the introduction of National Company Law Tribunal (**NCLT**), HC has no jurisdiction to try and entertain the present petition in view of the bar contained in section 430 and section 434(1)(c) of the Companies Act, 2013 (**the Act**).

Delhi HC's decision:

- HC perused the provisions of the Act and stated that the NCLT has been vested with powers that are far-reaching in respect of management and administration of companies.
- HC held that the issuance of share capital as was done in the present case, to the detriment of an existing member is prejudicial to the said member and also the interest of the Defendant Company. HC said that moreover, under section 242(2) of the Act, restrictions can be imposed on the transfer or allotment of shares and passing of such orders is within the jurisdiction of NCLT.
- Thus, observing that the NCLT is empowered to decide under section 430 of the Act and concluded that it had no jurisdiction in the present matter, and rejected the petition.

**3. SHRI SURJEET SINGH V.  
PROWESS INTERNATIONAL  
PVT. LTD. & ORS.,  
24 OCTOBER 2018**

The National Company Law Appellate Tribunal (**NCLAT**), passed a judgment overturning the ruling of the Kolkata bench of National Company Law Tribunal (**NCLT**) by finding that there existed a case of oppression and mismanagement against one of the founding directors, Surjeet Singh (**Petitioner**) by Prowess International Pvt. Ltd. (**Company**) and other directors of the Company. The matter was remitted to the NCLT giving directions as to the future transfer of shareholding.

**3. SHRI SURJEET SINGH V.  
PROWESS INTERNATIONAL  
PVT. LTD. & ORS.,  
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A petition for oppression and management was filed by Shri Surjeet Singh against the Company, two other founding directors, Mr. Prakash Kumar and Mr. Manoj Kumar Jha (**Respondent No. 4**), and a fourth director, Ms. Usha Rani Jha (**Respondent No. 3**). The Company Law Board (**CLB**) after being convinced of there existing a prima facie case passed an order to maintain status quo regarding the shareholding pattern of the Company and the composition of the board of directors. However, the NCLT later rejected the petition and an appeal was brought before the NCLAT by the Petitioner.

The NCLAT made the following observations :

- The withdrawal of the Petitioners' functions as a director, stopping his remuneration and transfer of shares from Respondent No. 3 to Respondent No. 4, was in direct contravention of the order of the CLB and hence invalid. If the respondents had to take such action, they should have gone for a modification of the order after citing reasons.
- The NCLAT also found a case of oppression and mismanagement as per the original petition where it noted that the respondents had not acted upon the valuation report and on multiple occasions had not taken the objections of the Petitioner into consideration.
- The NCLAT referred to an SC ruling and held that the interest of the shareholders as a whole was material and even in the absence of proof of oppression, the minority shareholders should be given an opportunity for their shares to be purchased by the remaining shareholders. Since this opportunity was not provided, it was held to be a case of oppression and mismanagement.

**4. IN THE MATTER OF NIIT  
TECHNOLOGIES LIMITED  
12 NOVEMBER 2018**

The National Company Law Tribunal (**NCLT**) passed an order allowing the amalgamation petitions for three companies after taking into consideration the objections raised by the Income Tax department (**IT Department**) as to the main objective behind the merger of the companies.

A merger petition was submitted before the NCLT by PIPL Business Advisors and GSPL Advisory Services as amalgamating companies and NIIT Technologies Limited as an Amalgamated Company. After the merger petition was received by the NCLT and the scheme of amalgamation duly examined, the statutory authorities and sectoral regulators were directed to issue their response to the scheme. All such authorities and regulators gave their approval to the scheme except the IT Department which argued that the scheme was a means to avoid income tax liability and hence must not be allowed.

The Tribunal determined the issues in question and the following major points of law were laid down:

- When a scheme is up for consideration, the onus is on the IT Department to establish that the scheme has only one purpose, which is an entity created solely to evade tax payment.
- The role of Income tax as compared to that of Central Government or the Regional Director is very limited.

#### 4. IN THE MATTER OF NIIT TECHNOLOGIES LIMITED 12 NOVEMBER 2018 CONTINUED...

- In the present case, since the IT Department failed to show how undervaluation of shares and their transfer thereof as a gift would result in tax evasion, the scheme was approved.
- A distinction must be made between tax evasion and employing a method that is tax efficient and a beneficial way of structuring the transaction.

#### 5. THE COMPANIES (AMENDMENT) BILL, 2018

The Companies (Amendment) Bill 2018 (**the Bill**), which is currently under debate in the Rajya Sabha, after having been passed by the Lok Sabha seeks to repeal the Companies (Amendment) Ordinance, 2018 (**the Ordinance**) which was promulgated following the recommendations of a Committee formed in July 2018 to promote better corporate compliance. As the parliament was not in session and immediate action was required to be taken, the Ordinance had been passed. Over and above the changes introduced by the Ordinance, the Bill seeks to introduce certain other provisions which have been discussed below:

1. Rectification by Central Government in Register of Charges: The Bill seeks to amend section 87 of the Companies Act, 2013 (**the Act**) and lay down conditions under which the Central Government may direct to provide an extension of time or rectify any errors or mis-statement with respect to intimation that is required to be made to the Registrar of Companies (**RoC**) regarding creation of charge, its modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83.

The law as it currently stands, gives the Central Government leeway to give such directions on any other grounds that it deems to be just or equitable, however, the Bill seeks to remove this power of the Central Government. To put it succinctly, section 87(1)(ii) has been omitted from the Act.

2. Report on Annual General Meeting: The Bill introduces a penalty for continuous contravention of provisions of section 121 of the Act. It lays down that any continuous default in not filing the report on the annual general meeting shall attract a further penalty of INR 500 per day to a maximum of INR 500,000 for the company and a further penalty of INR 500 per day and to a maximum of INR 100,000 for the officer in default. The original minimum penalties for default have been retained as INR 100,000 for the company and INR 25,000 for each officer in default.

2. Registrar's power to remove name of company from Register: The Bill introduces additional grounds under which the RoC may remove the name of the company from the register. These additional grounds arise when the subscribers to the memorandum of association have not paid the subscription which they had undertaken to pay at the time of incorporation and a declaration to this effect has not been filed within 180 days of the incorporation under section 10A or when the company is found to have not started carrying out any business after the physical verification carried out by the RoC under section 12(9). The Act as it now stands provides for just two grounds for removal of the name of the company from the Register.

## 6. COMPETITION COMMISSION OF INDIA (GENERAL) AMENDMENT REGULATIONS, 2018

CCI has issued the Competition Commission of India (General) Amendment Regulations, 2018 (**Amendment Regulations**) to the Competition Commission of India (General) Regulations, 2009 (**Regulations**). The Amendment Regulations shall come into force from the publication in the Official Gazette.

The following important modifications were made in the Regulations:

- The Amendment Regulations introduced regulation 46A which authorizes an advocate to accompany anyone summoned by the DG only if a request in writing and a vakalatnama (i.e., power of attorney) has been submitted to the DG for such purpose. The Regulation prohibits the advocate from being within hearing distance or communicating with the summoned person during his examination.
- Regulation 46A also states that no misconduct on part of the advocate would be allowed and in case of such misconduct, the DG shall forward a complaint in this regard to CCI. CCI, on being satisfied with the merits of the complaint, may pass orders debaring the advocate from appearing in further proceedings before the DG as well as CCI.

The Secretary may even forward a complaint in this regard to the Bar Council, if so directed by CCI.

## 1. NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION V. SMT. SUJATHA, 02 NOVEMBER 2018

### LABOUR LAW

The respondent's husband was an employee of the appellant and worked as a driver. On 06 April 1999 he felt a pain in his chest and died of a heart attack. The petitioner filed a claim petition before the Commissioner under the Workmen's Compensation Act, 1923. The Commissioner awarded a sum of INR 379,120 to be paid by the appellant within 45 days, failing which an interest shall be levied at the rate 12% per annum. The appellant had previously appealed against the Commissioner's order before the Karnataka High Court, which was dismissed. A Special Leave Petition was therefore filed before the Supreme Court of India (**SC**) against this order.

The Supreme Court held:

- SC observed that the following should be considered while determining the compensation to be awarded:
  1. Whether an accident had really occurred and whether it had occurred during the course of employment;
  2. Whether the accident was a result of the work involved and in what manner it had occurred;
  3. Whether the accident occurred due to the employee's negligence;
  4. The age and monthly salary of the employee;
  5. The number of persons dependent on him;
  6. The extent of disability occurred and the severity of injuries;
  7. Whether the employer had some insurance coverage to cover the incident.
- SC observed that the Commissioner had considered these points while passing the order and upheld the amount of compensation awarded. The impugned order was not perverse and all the facts along with the evidence had been properly considered.
- It upheld its decision in the matter of *Pratap Narain Singh Deo v. Srinivas Sabata & Anr.* (1976) 1 SCC 289 wherein it held that an employer is liable to pay compensation to a workman as soon as the workman suffers an injury out of and during the course of employment and not from the date of adjudication of the claim.
- SC observed that the Karnataka High Court was right to dismiss the case on facts as there was no question of law in dispute that could have given rise to an appeal.
- The decision of the Commissioner with respect to levying a 12% interest on the awarded sum from the date of order if the appellant failed to comply within 45 days was held to be incorrect. SC modified the order to that extent directing levying of interest at the rate of 12% on the awarded sum of INR 379,120 from the date of the accident.
- The respondent was directed to comply within 1 month.
- It is to be noted that none of the parties had been present and the question of law settled was not in the petition. The Court passed an ex-parte order upholding the spirit of the law.

## 2. CONTRACT LABOUR (REGULATIONS AND ABOLITION) CENTRAL (AMENDMENT) RULES, 2018

On 15 November 2018, the Central Government passed a notification amending the Contract Labour (Regulation and Abolition) Central Rules, 1971 (**Rules**) vide Contract Labour (Regulation and Abolition) Central (Amendment) Rules, 2018.

Some key points of this amendment are:

- Incorporation of online platform to facilitate payments: The Ministry of Labour and Employment has started the Shram Suvidha Portal, as a result of which, the payment that was previously required to be made to the registering officer of the area can now be made online. The following applications and their respective payments can be now made online:
  1. The application under section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 and the fees to be paid by the principal employer for the registration of his establishment;
  2. As per rule 18(4) of the Rules, any changes in the establishment, with respect to the particulars that have been mentioned in the certificate, can now be intimated online on the web-portal within 30 days of such change;
  3. Rule 21 of the Rules has been amended to the effect that a contractor can now submit an online application at the web portal for the grant of license by the licensing officer. A certificate from the principal employer affirming the contractor's employment may also be uploaded along with the application. The fees associated with the application and the security to be deposited can now be paid online;
  4. Under rule 28(2) of the Rules, any contractor can now file an online application to get his license amended and the payment for the amended license under rule 28(3) of the Rules can now be made online; and
  5. Under rule 29(1) of the Rules, application for renewal of license can now be submitted online.
- The principal employer or the contractor is now not required to personally submit or send by registered post the abovementioned applications to the registering officer or the licensing authority respectively;
- The requirement of a demand draft for various payments under rule 38 of the Rules has been omitted; and
- The registering officer or the licensing authority while denying any application or ordering any changes now has to provide reasons for such denial or for requesting such change at the online platform.

### 3. MAHARASHTRA SHOPS AND ESTABLISHMENT (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 2017

On 07 September 2017, the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2017 (**the new Act**) received assent by the Governor of Maharashtra and was published in the Maharashtra Gazette. The Act replaced the Maharashtra Shops and Establishments Act, 1948 (**the old Act**).

Some key points of the Act are:

- Applicability: The new Act applies only to establishments that employ more than 10 workers. No such qualification existed under the previous regulations.
- Definition of Establishment: The definition of establishment has been expanded under the new Act and now includes a much wider category of workplaces, to the exclusion of the establishments that come under the Factories Act, 1948. The new Act also provides a list of establishments to whom the provisions of the new Act would not apply.
- Scope of a 'worker': The term 'employee' as used under the old Act has been removed and replaced by the term 'workers'. The term 'employee' under the old Act had a wider scope, which has been reduced under the term 'worker'. Persons that are working in an organizational setup, or a family run business shall not be covered under this new Act and thereby not have laws protecting their rights. The new Act also excludes people working in a managerial or supervisory position.
- License Requirements: Any newly formed establishment must get themselves registered under the provisions of this new Act within a period of 60 days from commencement of business. The time period for such registration was 30 days prior to the passing of this new Act. A Labour Identification Number (LIN) shall also be sent to the employer along with the registration certificate. The registration certificate granted is valid for a period of ten years. This period earlier was limited to a maximum of two years at a time.
- Cancellation of Registration: The new Act also provides for the cancellation of registration if it comes to light that the registration had been obtained by misrepresentation or suppression of material facts.
- Working hours: The new Act also made changes to the hours of operation and allows certain kinds of establishment, like movie theatres, restaurants medical practices and the kind to stay open for 24 hours, but excludes establishments that sell alcohol or cigarettes.
- Prohibition of Discrimination against women: The new Act includes provisions prohibiting discrimination against women workers. The Act also provides for women to work between the hours of 9.30 p.m. and 7 a.m., with her consent; if safe working conditions and transportation to the residence of the worker are provided to such worker.

**MAHARASHTRA SHOPS  
AND ESTABLISHMENT  
(REGULATION OF  
EMPLOYMENT AND  
CONDITIONS OF SERVICE)  
ACT, 2017  
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- Over-time provisions: The new Act provides for the working hours of the workers to not exceed nine hours in a day and 48 hours in a week. Any over-shoot in this regard will result in the employer paying double the regular wages of such worker.
- Holidays and Leaves: The new Act provides for a minimum of 8 casual leaves in a year with a minimum of 8 festival holidays. The new Act now provides for accumulation of leaves to upto 45 days. The limit earlier was 42 days.
- Facilitators: The new Act provides for appointment of Chief Facilitators and Facilitators for the enforcement of the provisions of this Act. The office of Inspectors under the old Act has been removed. The Facilitators shall be appointed by the State Government who shall derive their powers under this Act. A Facilitator may carry out random inspection of establishments, advise employers with regards to compliance with the provisions of this new Act and perform other functions as laid down in the new Act.
- Penalty: The penalty clause for contravention of any of the provisions of the new Act have also been revised. The fine may extend to INR 100,000 and in case of a continuing offence, an additional fine of INR 2,000 per day shall be levied; provided that the total amount of the fine shall not exceed INR 2,000 per worker employed. For a second contravention, the fine may extend to INR 200,000.

**4. MAHARASHTRA SHOPS  
AND ESTABLISHMENT  
(REGULATION OF  
EMPLOYMENT AND  
CONDITIONS OF SERVICE)  
RULES, 2018**

On 23 March 2018, the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Rules, 2018 (**Rules**) was published by the State government. The Rules have replaced the Maharashtra Shops and Establishments Rules, 1961.

Some key points of the Rules are:

- Registration Certificate: Rules regarding registration, renewal of registration, modification or cancellation of establishment certificates have been laid down and no fees have been prescribed for such acts. The manner in which the registration must be done, along with intimation requirements regarding commencement and closing of business has been established. The Forms in which all of the above must be done are added as annexures to the Rules.
- Opening and Closing Hours: The powers of the Government regarding the regulation of opening and closing hours of various establishments has been stated. The Government may in public interest, after consultation with the Municipal Commissioner and the police commissioner may fix or amend the opening and closing hours of all classes of establishments.

**MAHARASHTRA SHOPS  
AND ESTABLISHMENT  
(REGULATION OF  
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CONTINUED...**

- Employment conditions for Women: The Rules discuss the minimum standard of employment conditions that must be in place for women workers. Among others the rules lay down provisions with respect to safeguards to prevent sexual harassment at work, dealing with instances of sexual harassment, maintenance of complaint boxes, hiring of women security guards, a minimum of three women workers working together if employed in the night shift, providing for safe transportation to the residence in case of employment in the night shift. Other rules for the advantage of women workers are additional paid holidays for women workers employed in the night shift, maternity leave of 24 weeks before and after child birth for night shift workers, etc.
- Display of requisite notices at the premises: Every establishment shall display a notice either on its website or the premises showing the hours of work, rest-interval, weekly holiday, the shift-schedule and weekly holidays of workers engaged in shifts.
- Part-time employment: The Rules also specify the provisions regarding part-time employment of workers. They lay down that part-time employees shall not be hired for more than 5 hours a day and no overtime would be allowed
- Health, Safety and Welfare Committee: The Rules provide for the establishment of a health, safety and welfare committee in every establishment with more than 100 workers, which committee shall have equal representation from employers and workers. The functions and duties of the Committee shall include survey and rectification any of accident-prone areas or hazardous substances, conduction of healthcare and wellness camps, creation of awareness of contagious diseases or other epidemics, and any other social, cultural and educational awareness programs.
- Registers and Records: The Rules provide for the maintenance of registers and records regarding the wages payable and the Muster roll. The records shall be maintained in the English language. All inspection records of the Facilitator (as explained below) shall also be preserved for a period of three years which must be produced on demand. The Rules also state that the annual return of the establishment shall also be uploaded on the website.
- Facilitator: The Rules lay down the duties and powers of the facilitators which shall include examinations of establishments for purpose of satisfying the provisions of the Act. The Facilitator shall also serve all notices and orders as he is required per the provisions of the Act.
- Compounding of Offences: The Rules lay down the procedure that must be followed for dealing with applications for the compounding of offences made by the owners of the establishments. It also has the application attached as an Annexure. It discusses the provisions regarding the fees for such compounding as well.

**MAHARASHTRA SHOPS  
AND ESTABLISHMENT  
(REGULATION OF  
EMPLOYMENT AND  
CONDITIONS OF SERVICE)  
RULES, 2018  
CONTINUED...**

**5. SATYA DEVI AND ORS. VS.  
SATLUJ JAL VIDYUT NIGAM  
LIMITED SHANAN AND  
ORS., 11 DECEMBER 2018**

- Intimation of persons employed: The rules provide for a special intimation that is required for a list to be provided of all persons that are discharging managerial as well as confidential work for the establishment. Such intimation shall be submitted to the Facilitator and in manner as provided in the Annexures.

Satya Devi (**Petitioner**) was engaged as an employee by Satluj Jal Vidyut Nigam Limited (**Respondent**) through multiple contractors and she had been serving as such for 15 years. The Petitioner was not paid her wages for the months of July and August 2016, and therefore an application was filed by her before the labour court. The labour court directed the Respondent to examine the case of the Petitioner. The Respondents passed an order under which the claim of the Petitioner as regards the payment of regular salary was rejected, and she was advised to mark her attendance with the contractor regularly and thereby facilitate future payment. The question of fact under dispute was whether there existed a master–servant relationship between the Petitioner and Respondent and who was to pay the Petitioner’s dues. The contractor had received the salary of the Petitioner from the Respondent and was willing to transfer it to the Petitioner, provided she submitted the relevant documents with the contractor.

The Hon’ble High Court of Himachal Pradesh (**HC**) held the following:

- Since the proceedings before the HC were in the nature of extraordinary summary proceedings, the question of the true relationship between the Petitioner and Respondent cannot be discussed in the present forum, and that the Petitioner must bring up the matter before another appropriate forum;
- The Petitioner was directed to submit the requisite documents to the contractor so that her salary could be deposited; and

Further, HC said that the Petitioner should continue to receive her salary through the contractor till the resolution of the matter by the labour court. In respect of any claims for past dues, an application should be made to the contractor and a copy should be sent to the Respondent and on relevant inquiry into the matter, the Petitioner’s dues should be paid.

## 6. KHARGESWAR NARZARY AND ORS. VS. THE STATE OF ASSAM AND ORS., 11 DECEMBER 2018

In the case at hand the services of workmen (**Petitioners**) of Bongaigaon Thermal Power Station were discontinued by the management (**Respondent**) due to the closure of the power station. The case was referred to the Labour Court by the state government, the subject matter of which was whether the Petitioners were entitled to reinstatement as muster roll workers along with backpay and whether there existed an employer-employee relationship between the parties. The Respondent contended that the Petitioners were merely employed as contract laborers and that did not merit reinstatement. The Petitioners contended that they were issued appointment letters which had later been recalled. The only proof to support their cause were copies of ID cards issued to them. The Labour Court passed the award in favour of the Respondent as the Petitioners failed to prove their case sufficiently. The Labour Court held that mere copies of ID cards issued to the Petitioners did not establish an employer-employee relation between the parties. A writ petition was filed in the HC against the order of the Labour Court.

The Hon'ble High Court of Gauhati (**HC**) held that:

- in exercising its power under article 226 of the Constitution of India, the court must refrain from interfering with the decision of tribunals or courts unless such decision is unreasonable, erroneous or arbitrary. It was further held that new arguments could not be introduced at this stage and must have been brought up before the trial court;
- the workmen did not provide sufficient evidence to prove their case before the Labour Court. It was the contention of the Petitioners that the standard of proof as is required by the Indian Evidence Act, 1872, (**Evidence Act**) cannot be compared to the standard requisite before Industrial Tribunals and that the courts must see to it that substantial justice is done. The Labour Court noted that even though the provisions of the Evidence Act were not to be strictly complied with, certain semblance to the procedure as described in the Evidence Act must be maintained. The HC thus held that the requirements of proof could not be totally dispensed with; and
- the burden of proof was on the Petitioners to prove their case before the Labour Court and their contention that the Respondent had not been able to disprove their disputations was not a sufficient ground to reverse the order.

Therefore, HC dismissed the present writ petition.