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2116

Your Roll No.

M.Com. / Sem. IV

A

Paper – 7152 : Industrial Law
(Admissions of 2009 and after)

Time : 3 Hours

Maximum Marks : 70

(Write your Roll No. on the top immediately on receipt of this question paper.)

Attempt All questions. All questions carry equal marks.

All questions are compulsory and carry equal marks. Credit will be given for answers supported by case laws, if any.

1) Answer the following queries under the EPF & MP Act, 1952 citing case law, if any. Each carries equal marks:

1. How much Administrative Charges an employer is required to pay under the EPF Act?
2. What are the requirements for the applicability of EPF Act?
3. Whether nomination for Family Pension Scheme is deemed valid for Employees Pension Scheme also?
4. What is the rate of Provident Fund contribution by the member?
5. Can member change his/her nomination?
6. How many years of service is required to be eligible to receive member pension?
7. What consequences will follow if an employer fails to deposit employee's contribution with PF authorities?
8. Is it mandatory for an employer to enroll a new employee whose salary exceeds the prescribed limit?
9. Does the EPF coverage end when the numbers of employees are reduced below the prescribed limit?
10. Can financial difficulties be taken a plea for non-payment of PF contribution?
11. Will the EPF & MP Act, 1952 apply to a contractor who is himself working along with contract labour?
12. Whether EPF contributions will be payable on the arrears of wages paid to the employees?
13. Can an employee contribute whole of his salary in the PF?
14. Whether Government has decided to keep open its option to invest Employees Provident Fund in the Stock market?

OR

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Attempt any three of the following. Each carries equal marks:

- a) Briefly explain the features of the Employees Pension Scheme, 1995 provided under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
- b) The respondent M/s. Moti Warping Factory which was a partnership firm comprising of two partners namely Shri Shankar Lal Garg and his son Shri Suraj Narain Garg, was registered under the Factories Act, the Rajasthan Sales Tax, Central Sales Tax, ESIC Act and was also registered as the Small Scale Industry. According to the case set up by the respondent-petitioner before the learned Single Judge in the writ petition, this factory was erected on a piece of land belonging to Mrs. Uma Garg wife of Shri Suraj Narain Garg, who is the partner of the firm by getting lease deed executed in favour of the firm. The factory started its production on 23-9-1973. Number of its employees always remained less than fifty upto 1978. In view of the provisions contained in the EPF Act of 1952, the provisions of the said Act were not applicable to the petitioners factory for a period of five years from the date such factory was set up i.e. on 23-8-1973. It is so because the factory never employed more than fifty employees for any single day during that period of five years. After 23-8-1973, the petitioners themselves requested the Commissioner for its registration under the provisions of the EPF Act of 1952 with effect from 1-9-1978. Dispute in substance is whether the factory would be covered under the Act of 1952 w.e.f. 1-9-1978 as asserted by the respondent or from 31-8-1976 as is the case of the appellant. Decide giving case laws and provision.
- c) The petitioner's establishment is engaged in the sale of fruits in Subzi Mandi, Azadpur. The inspector of RPFC visited the premises of petitioner's establishment on 22nd June and 6th July, 1989 for the purpose of inspecting as to whether the petitioner establishment would be covered under the Act and met one Sh. K.N. Jaggi, who transpired to be husband of one of the partners of petitioner's establishment Smt. Sulakshna Jaggi. Sh. K.N. Jaggi handed over a letter dated 22nd June, 1989 to the inspector on the letterhead of petitioner's establishment, giving details about the said establishment duly signed by him. On the basis of the information received by the Inspector, he recommended coverage of the petitioner establishment with effect from 1st June, 1989 under the Act and accordingly submitted a report to his office. On the basis of the said report, a coverage letter dated 24th July, 1989 was issued to the petitioner establishment, covering it under the Act with effect from 1st June, 1989. As the petitioner did not report compliance of the provisions of the Act, proceedings under section 7A of the Act were initiated against it and summons dated 11th April, 1990 were issued to the petitioner establishment. Decide, if the claim of the petitioner establishment that the 12 piece rate casual workers working under the contractor ought to have been excluded by the RPFC while considering the case of applicability of the Act to the petitioner establishment is contrary to the intendment of the Act and accepted.
- d) Will a sweeper who works twice or thrice a week, a night watchman who keeps watch on other shops also and a gardener who comes for ten days in a month be treated as 'employees' under the EPF Act, even though they are not directly connected with the establishment?

2) Answer the following queries under the ESI Act, 1948 citing case law, if any. Each carries equal marks:

1. What are the medical benefits and sickness benefits available to the insured person and his family members?
2. What is the difference between contribution period and benefit period?
3. Will an employee continue to be covered under the ESI Act even if he crosses the prescribed wage limit?
4. Who is to prove that 20 persons are not employed in the establishment?
5. Whether the employees employed by other units, doing the job work of the principal employer, are covered under Section 2(9) of the said ESI Act?
6. What constitutes a 'shop' under the ESI Act?
7. Whether the use of fridge for the purpose of storing cold drinks and other eatables amounts to use of power and would come under the definition of manufacturing process?
8. Whether the security personnel engaged through agency is treated as employees?
9. Whether a partner of a firm being establishment under the ESI Act is covered?
10. Whether canteen workers are covered under the Act?
11. Whether tailoring of clothes are covered?
12. Will a club which has a kitchen rendering catering services to its members be covered?
13. Whether free lancer such as an electrician or a plumber or a TV mechanic is covered under the Act?
14. Whether ESI contribution is payable on paid holidays?

Or

Attempt any three of the following. Each carries equal marks:

- a) Differentiate between ESI Act, 1948 and Workmen's Compensation Act, 1923
- b) The appellant is a Corporation (ESIC) incorporated under the Employees' State Insurance Act, 1948, the respondent is a co-operative society incorporated and registered under the Maharashtra Co-operative Societies Act, 1960 having its registered office at Tulsiani Chambers, 212, Nariman Point, Bombay. On 10-1-1989, the appellant issues a letter to the respondents informing that they are covered by the ESI Act and requesting immediate compliance. Can the co-operative societies be treated as establishments as defined under the ESI Act?
- c) The appellant who was a covered employee under the ESI scheme met with an accident in the course of his employment on 15th June, 1990. An accident report was sent by the employer respondent No. 2 in the present appeal to the respondent ESI Corporation. The Corporation however refused to treat the injuries sustained, as injuries suffered during employment on the plea that on the date of the accident the employee was not covered under the ESI scheme. It was also communicated to the employee by a communication dated 4th December, 1990 that he had ceased to be an employee with effect from 1st October 1989 and therefore he would not be entitled to any benefit for the disability but would be eligible for sickness benefits for the period 16th June, 1990 to 30th June, 1990. The employee thereupon filed an application before the Employees Insurance Court,

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Alappuzha claiming the benefit of disability on account of the injuries that he had suffered. In the counter statement filed by the Corporation, it was pointed out that the employee as an insured person had made contributions up to 30th September, 1989 and that he ceased to be an employee with effect from 1st October, 1989 as his salary had exceeded Rs. 1600 per month from 1st October 1989 and as such was not entitled to any benefit towards disability. Decide giving case laws and provisions.

- d) The security service has been provided for safe-guarding the property which has been purchased elsewhere and the security guards through agency were not therefore working in the premises of the factory. Can the security personnel engaged through Nasey and Ace Security Services be treated as employees of the respondent and fall under the definition of an employee as set out in section 2(9) of the ESI Act and the payments made for security arrangements to the agency be treated as wages?

3) Attempt any three the following. Each carries equal marks:

- a) Define citing case law, if any the concepts of manufacturing process, factory, and occupier under the Factories Act, 1948.
- b) Briefly discuss the provisions of the Factories Act, 1948 relating to safety and working hours of workers.
- c) In the canteen in question, the manufacturing process in the form of cooking and preparation of food is being carried on and the food so prepared is served to the employees of SRF, Ltd., on whom a statutory obligation is imposed by S.46 of the Factories Act, to provide and maintain a canteen for the benefit of their employees. Decide, if the canteen run by the contractor in the premises of SRF, Ltd., is a factory under section 2(m) of the Factories Act?
- d) Whether a sugar factory ceases to be a factory when no manufacturing process is carried on during off-season? Cite case law.

4) Attempt any four of the following. Each carries equal marks:

- a) Discuss the provisions of the Employee's Compensation Act, 1923 relating to employer's liability for compensation.
- b) The employees of the Water Supply and Power Distribution Department of the Devasthanam are about 200 in number. They formed themselves into a union and applied for the union being registered under the Trade Unions Act, 1926. The Registrar having been satisfied that all the formalities required under the Act have been complied with the registered union issued a Registration Certificate, on the 10th July, 1970. The General Secretary of the union wrote to the Executive Officer of the Devasthanam that the Departments had formed themselves into a union and the union is registered under the Trade Unions Act on 23rd May, 1970. He requested that the union may be recognised at an early date. A reminder was again sent on 11th March, 1971 and 21st June, 1971. The question involved in this case is whether the Tirumala Tirupathi Devasthanam can be considered to be an industry and the persons employed by it are workmen and whether they can register themselves into a trade union? Decide giving case laws and provisions.
- c) On May 26, 2001 the plaintiff introduced a Voluntary Retirement Scheme for its staff. The said scheme was open till June 25, 2001. Ever since the plaintiff launched its

Voluntary Retirement Scheme, the office bearers, members, supporters, aides, agents, and associates of the respondent Union had been resorting to various illegal and criminal activities with a view to put pressure on the plaintiff to withdraw the aforesaid scheme. In particular, those persons staged gate demonstration, agitation, stoppage of ingress and egress of customers and management staff and even resorted to criminally intimidating and threatening the officers and staff of the plaintiff and illegally interfering with and/or obstructing the normal functioning of the plaintiff in the offices and the branches. The respondent Nos. 1 and 13 and their respective office bearers, members, aides, associates, agents, and supporters had been shouting slogans in or around the various office and/or branch premises of the plaintiff during the working hours, forming unlawful assembly in and around the office of the various branch premises threatening the officers and loyal employees and also hurled abuses at the management thereby interfering with free ingress to and/or egress from the offices and branch premises. By reason of the wrongful acts as aforesaid no business or work could be transacted in any of the aforesaid offices and/or branches since the afternoon of July 18, 2001. The respondent Unions and their office bearers and/or supporters had threatened to gherao and/or wrongfully confine the officers and loyal employees of the plaintiff. Decide, if these union office bearers will have immunity from misconduct?

- d) The workman had been in service from 18.05.1990. On 25.12.1990, he suffered a cerebral stroke while at sea. He was therefore taken ashore and was treated in a hospital. Thereafter, in Jan 1991, he was repatriated to India and was admitted to hospital for further treatment. On 11.02.1991, respondent's son had discharged him from the hospital against the medical advice and returned to their native place. The respondent workman claims an amount of Rs 15 lakhs as compensation from the appellant shipper contending that he was suffered from an accident arising out of and in the course of employment. Discuss employer's liability for compensation.
 - e) The deceased Jashubhai Rana expired in the accident while performing his duty in course of his employment. Employer ONGC given a job to wife of the deceased. Decide, if giving job to wife be considered for deducting the compensation. Can the policy of compassionate appointment be used as a sword to slash the compensation amount?
- 5) Write short notes on any four of the following
- a) Procedure for fixing and revising minimum wages
 - b) Provisions relating to calculation of bonus
 - c) Set on and set off of allocable surplus
 - d) Teacher if an employee under Payment of Gratuity Act
 - e) Forfeiture of gratuity
 - f) General funds under Trade Union Act.