

**Roll No. ....**

**OPEN BOOK EXAMINATION**

**Time allowed : 3 hours**

**Maximum marks : 100**

**Total number of questions : 4**

**Total number of printed pages : 12**

**NOTE : Answer ALL Questions.**

**1. Case Study :**

Pranav was appointed in the service of Innovative Publications Ltd. (A Company in the business of newspaper publications in name of Innovations Daily), as the Chief Sub-Editor in January, 2020. Thereafter on 01.01.2022 he was promoted as Chief of News Bureau. The Company transferred Pranav to its Kozhikode Unit on 27.05.2022. However, without accepting the transfer order, on 30.05.2022, he had applied for leave from 01.06.2022 to 30.06.2022. Thereafter, on 01.07.2022, he again applied for leave for a further period of 50 days. Though Pranav had been directed to join duty at Kozhikode, he did not do so. Therefore, the Company issued a letter dated 10.11.2022 cautioning Pranav against taking leave for such a long duration. Since Pranav did not abide by the said communication, he was issued with a memo dated 29.11.2022 alleging grave misconduct. Pranav joined duty at Kozhikode thereafter. However, he was reluctant to discharge of his duties diligently. Subsequently, Pranav was transferred to Kollam as a Desk Editor of the Quilon Bureau on 13.04.2023. On 20.06.2023, a memo was issued to Pranav alleging unauthorised leave. Since he did not show any improvement, a show cause notice dated 22.07.2023 was issued

to Pranav seeking his explanation. He was also informed by the said communication that the company would be constrained to terminate his services if his explanation was not submitted within three days. Pranav did not submit any explanation and therefore, he was dismissed from service on 05.08.2023. Pranav raised an industrial dispute under Section 10 of the Industrial Disputes Act, 1947 to the Labour Court. Pranav claimed that he was designated as Chief of News Bureau, the duties discharged by him were those of a Working Journalist. He was the President of the Working Journalists Union during 2022–2023. During the period he was President, he had demanded enhancement of the wages inviting the wrath of the employer. His dismissal is on baseless charges and is motivated by the personal animosity nurtured by the employer. Though it was contended that his work was supervisory in nature, no evidence was adduced by the management in support of the said claim.

Pranav's wife Bhumika was working as a Clerk-Typist in the Office of the Managing Director (MD) of Fine Fabrics Ltd. and Bhumika was reporting to Mahendra, Senior Manager of the MD's Secretariat. The FFL is engaged in manufacturing of synthetic yarn. A meeting of some foreign clients of the FFL was kept in a Five Star Hotel. Mahendra insisted Bhumika to go with him to the Hotel for taking dictation from the MD and type out the matter. Under the pressure of Mahendra, Bhumika went to take the dictation from the MD. While Bhumika was waiting in adjoining room for the dictation from the MD, Mahendra tried to sit too close to Bhumika and despite her objection he did not give up his objectionable behaviour. Bhumika later took dictation from the MD. Mahendra told her to type and get its print out. Since the laptop and printer were located in the basement of the Hotel, Mahendra volunteered to show her the basement for getting the matter typed and taking advantage of the isolated place and again tried to sit very close to her despite her objections. The

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draft typed matter was corrected by MD who asked Bhumika to retype the same. Mahendra again accompanied with Bhumika to the basement and repeated his overtures. Bhumika warned Mahendra that she would leave the place if he continued to behave like that, however, Mahendra did not stop and continued his objectionable acts. Next day, Bhumika made a written complaint to the MD.

Pranav's child, named Akshay is just 10 years old but performs dance very well and participated in the School dance competitions. He also participated in the famous TV show of 'Dance India' which is telecasted on the TV having nationwide presence.

In this background, answer the following questions :

(a) Whether Pranav is to be considered as a Working Journalist as per the provisions of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ?

(5 marks)

(b) Whether Pranav who was working as the Chief of News Bureau of Innovative Publications Ltd., could be considered to be a workman under the provisions of the Industrial Disputes Act, 1947 ?

(5 marks)

(c) Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) the sexual harassment includes a demand or request for sexual favours or making sexually coloured remarks; or showing pornography, but in the given case Mahendra has simply accompanied with Bhumika to the basement of the Hotel to get the matter typed and print and had done nothing which may amounts to sexual harassment. Further the place was not the Office place of Bhumika but it was Hotel.

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Based on the given facts, whether the conduct of Mahendra shall be termed as sexual harassment when there was no physical contact and despite the fact, the incident happened in the Hotel which was not the workplace of Bhumika ? Give your answer with the decided case law.

(5 marks)

(d) Whether performing in the TV Show of 'Dance India' by Akshay is a violation of the provisions of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 since this Act prohibits the employment of children in any occupation and process ?

(5 marks)

(e) How did the Supreme Court justify the introduction of the "doctrine of apportionment of blame" in the context of unjustified strikes and lockouts during the proceedings of India Marine Service Pvt. Ltd. Vs. Their Workmen ?

(5 marks)

2. Bikaner Cold Storage Company Ltd. was carrying on the business of running a cold storage facility in Rajasthan, where agricultural producers and traders stored their perishable goods, mainly fruits and vegetables, for preservation. The business essentially required a limited number of permanent employees such as supervisors, clerks, accountants, mechanics, and helpers to maintain day-to-day operations like regulating the temperature, maintaining machinery, and supervising the storage process. However, during peak season when agricultural produce arrived in bulk there was a temporary need to engage extra labour for loading, unloading, stacking,

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and arranging goods inside the cold storage. These workers were employed for a few days or weeks depending on the volume of goods, and once the seasonal rush ended, their services were no longer required. The company maintained that such seasonal or casual labourers were not on its permanent rolls and were not engaged in the regular course of business but only as a stop-gap arrangement to meet temporary demands.

The Regional Provident Fund Commissioner issued a notice contending that the establishment fell within the scope of Section 1(3)(a) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, as the strength of employees exceeded twenty including these seasonal and casual workers. The Commissioner argued that since these persons worked under the control of the establishment and were paid wages, they should be counted as employees for the purpose of the Act. The company challenged this position and filed the case, asserting that the actual number of permanent and regular employees was below twenty and that inclusion of temporary or casual labourers would unfairly extend the application of the Act to establishments that otherwise did not meet the statutory threshold. The main issue before the Rajasthan High Court was whether temporary or seasonal workers, engaged for shorter durations and not forming a permanent part of the business, could be treated as "employees" under Section 1(3)(a) of the Employees' Provident Fund Act for the purpose of determining the statutory strength of twenty employees.

The Rajasthan High Court held that the persons employed in the normal and regular course of business of the establishment should be treated as "employees" for the purpose of Section 1(3)(a). However, persons employed only for shorter durations, whose engagement was not a regular feature of the business of the cold storage, could not be included in determining

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the employee strength. Accordingly, casual or seasonal workers brought in temporarily during peak demand were excluded from the calculation. On this basis, the Court concluded that the Act could not be made applicable to the petitioner establishment, as the required threshold of twenty employees was not satisfied.

- (a) How did the Rajasthan High Court distinguish between regular employees and casual/seasonal workers in determining the applicability of Section 1(3)(a) of the EPF Act ?
- (b) What legal principles of statutory interpretation did the Court apply in determining the scope of “employees” under Section 1(3)(a) of the EPF Act ?
- (c) Explain the provisions of Equal Remuneration Act, 1976 in connection with the offences committed by companies and penalty provisions.
- (d) Enumerate the non-applicability of EPF and Miscellaneous Provisions Act, 1952 to certain establishments.
- (e) ‘The fundamental principles lie in recognising the labour as human beings and not as the commodity and ensuring their spiritual conditions of freedom and dignity of economic security, equal opportunity and the peace could only be attained, if it is based on social justice’. Elaborate the aforesaid declaration adopted by International Labour Organisation (ILO) after the World War II.

(5 marks each)

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3. Smt. Sundarbai was the widow of a workman employed at the Ordnance Factory, Khamaria, Jabalpur. Her husband was engaged in the factory's operations, which involved regular and strenuous physical labour. While performing his duties in the course of employment, he suddenly collapsed and later died. The cause of death was linked to a heart attack, which she contended was the result of strain and stress arising from his employment. Sundarbai applied for compensation under the Workmen's Compensation Act, 1923, claiming that her husband's death amounted to an "accident arising out of and in the course of employment." The employer, the Ordnance Factory management, resisted the claim on the ground that the workman's death was due to a natural disease, namely heart failure, and not an accident. They argued that unless there was some untoward mishap or unexpected event traceable to the nature of work, the incident could not be treated as an "accident" under the Act. Therefore, they maintained that the claim for compensation was not maintainable. The matter eventually reached the Madhya Pradesh High Court.

The principal issue before the High Court was whether the death of Sundarbai's husband due to heart failure while performing his ordinary duties in the factory could be treated as an "accident" within the meaning of the Employees' Compensation Act, 1923. The Court had to examine whether there must be a direct and immediate causal link between the work and the injury, or whether even the ordinary strain of work, if it accelerated or aggravated a pre-existing condition, would be sufficient to establish such connection. Another issue was how to differentiate between "injury" caused by accident and death resulting from natural disease not connected with employment.

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The Madhya Pradesh High Court ruled in favour of Smt. Sundarbai, clarifying the scope of the expressions “accident” and “injury” under the Workmen’s Compensation Act. The Court held that an “accident” is not limited to external mishaps, falls, or injuries caused by violent occurrences. Instead, it can also include cases where the ordinary strain of ordinary work leads to or accelerates a physical breakdown, such as heart failure, provided there is a causal connection between the employment and the injury. The Court drew a distinction between “injury” and “accident” : an injury is the physical harm or medical condition suffered by the workman, whereas an accident is the untoward event in the course of employment that causes or accelerates such injury. If a workman, while performing his regular duties, suffers from a heart attack and it is shown that the strain of employment contributed to or hastened the fatal result, then such death can be said to arise “out of and in the course of employment.” The fact that the employee may have had a pre-existing heart condition was not material if the employment strain accelerated the injury. Applying this principle, the Court held that Sundarbai’s husband died because the stress and strain of his ordinary duties had accelerated his heart failure, and thus the death was an “accident” connected with his employment. Consequently, the widow was entitled to compensation under the Employees’ Compensation Act.

In the background of the given information, answer the following questions :

(a) How did the Madhya Pradesh High Court in Sundarbai’s case interpret the concept of “accident” under the Employees’ Compensation Act and why was this interpretation significant ?

(5 marks)

(b) In what way did the Court distinguish between “injury” and “accident” in Sundarbai’s case, and how did this affect the outcome ?

(5 marks)

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(c) What is meant by minimum rate of wages under The Minimum Wages Act, 1948 ?  
How is it fixed/revised ?

(5 marks)

(d) What are the features of the Code on Social Security 2020 ?

(5 marks)

(e) Sunidhi is Asstt. Manager in Quality Bank Ltd, Noida. She resides in a 2BHK flat which has been provided by the Bank with her college time friend Sandeep. Both of them are not a married couple, but staying in 'live-in-relationship'. After some time Sunidhi gave the birth to a baby girl. To avail the benefits under the Maternity Benefit Act, 1961, she immediately applied for maternity leave and other benefits. However, the Manager of the Bank refused to grant any benefits under the Act to Sunidhi since in the Bank's record her marital status was marked as unmarried. Whether the contention of the Bank Manager in not granting her maternity leave and other benefits is justified ?

(5 marks)

4. The Poona Employees Union was registered in 1986 as a general union intended to operate across industries within Pune district. Years later, D'Souza, a former president of the Union, applied to the Additional Registrar of Trade Unions under Section 10 of the Trade Unions Act, 1926, seeking cancellation of the Union's registration. He alleged that registration had been obtained by "fraud or mistake" and that the application and rules failed to identify a specific industry, rendering the registration invalid. Acting on this application, the Additional Registrar cancelled the Union's registration. On appeal, however, the Industrial Court, Pune

on 11th April 2008 set aside the cancellation, holding that the Registrar's action was legally unsustainable. D'Souza then invoked Article 226 before the Bombay High Court on 25th February 2009, which affirmed the Industrial Court's Order. Persisting, D'Souza appealed to the Supreme Court. During the Supreme Court proceedings, he argued that the Union's omission to specify the industry contravened Sections 4 to 6 and the prescribed forms/regulations; he also relied on decisions such as Indian Express (Bom) Employees Union v. K.M. Desai and Forbes Forbes Campbell on strict compliance with registration particulars. The Union, represented by senior counsel, countered that (i) Section 10 allows cancellation only on an application by a trade union or *suo motu* by the Registrar not at the instance of a private individual; (ii) the phrase "any industry" in its application and rules reflected a legitimate general union across all industries in Pune; (iii) the 2001 statutory amendments (effective 9 January 2002) to Sections 4 to 6 could not be retrofitted to a 1986 registration; and (iv) the Registrar had not conducted the requisite inquiry or satisfied Rule 8(2) of the Bombay Trade Union Regulations, 1926.

The Supreme Court in *D'Souza v Poona Employees Union* (2015) held that cancellation of a trade union's registration under Section 10 of the Trade Unions Act, 1926 can only be sought by the trade union itself or initiated *suo motu* by the Registrar, and not by a private individual. Since D'Souza was merely a former office-bearer, he had no locus standi to maintain such proceedings. The Court further clarified that the expression "obtained by fraud or mistake" refers to fraud or mistake on the part of the union at the time of obtaining registration, and not an error of the Registrar in granting registration. Even if the Registrar had made a mistake, that could not justify cancellation under Section 10. Moreover, the

cancellation order passed in this case was procedurally flawed as no proper enquiry or show-cause notice was given, and the requirements of Rule 8(2) of the Bombay Trade Union Regulations were not followed. On the substantive objection, the Court held that the use of the expression “any industry” in the Union’s application meant “all industries” within Pune district, and therefore the Union was validly a general union. The absence of specifying a single industry did not invalidate its registration. The precedents cited by the appellant were distinguished as factually different. The Court also emphasized that the 2001 amendments to Sections 4, 5, and 6 of the Act could not be applied retrospectively to a registration granted in 1986. Consequently, the appeal was dismissed and the validity of the Poona Employees Union's registration was upheld.

(a) How did the Supreme Court in D’Souza v. Poona Employees Union interpret the scope of Section 10 of the Trade Unions Act, 1926 with regard to locus standi ?

(5 Marks)

(b) Discuss how the Supreme Court differentiated between a ‘mistake by the union’ and a ‘mistake by the Registrar’ under Section 10 of the Trade Unions Act.

(5 marks)

(c) The jurisdiction of High Court under Article 226 is wider than Supreme Court under Article 32 because the High Court can exercise its writ jurisdiction not only for the enforcement of fundamental rights but also for enforcement of any legal right. Elucidate this statement in light of the decided case law.

(5 marks)

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(d) “No work, no pay” is the general principle, which means that an employee is not entitled to wages for the period when they haven’t worked. However, pensioners are being paid even for not working at all. Is it a bounty or ex-gratia payment for the past service rendered ? Analyse this with the decided case law.

(5 marks)

(e) Mehar, who is a Company Secretary was invited as Chief Guest in a Debate Competition organised by the City Law College. The law students were given the following topic for debate :

“The Code on Wages, 2019 is merely the amalgamation of the existing enactments relating to wages and has not widened the scope of minimum wages to all workers”.

Ten students participated in the debate, five in favour of the Code and five against the Code. At the end of the debate session, Mehar was invited to say few words about the Code. Write down the speech highlighting the key points of the Code on Wages and how the Code would facilitate the implementation and ease of compliance of labour laws.

(5 marks)