



Tax alert: “Retrospective termination of employment impermissible” – Punjab and Haryana High Court

20 September 2024

The Hon’ble Punjab and Haryana High Court has in a recent ruling held that employer cannot retroactively deprive the employee benefits accrued during the period of service by backdating the termination.

In a nutshell



The Hon’ble Punjab and Haryana High Court (the Court) has pronounced a judgement on July 29, 2024 - holding that dismissal from service can take effect from the date of termination with immediate or future date specified in the order. The employee is eligible to get the employment benefits till the date of passing of the impugned order by the company. The cessation of the employment contract partakes once the employer-employee relationship ends, and it cannot be made effective retrospectively.



The Court relied on earlier rulings wherein the view was that retrospective retirement of the employee is not permissible in law.

The scope of Articles 233, 234 and 235 of the Constitution of India were discussed in detail whereby mere passing the order instructing the employee to retire retrospectively based on the recommendation provided by the High Court specifying the compulsory retirement age cannot be sustained.



Where it is established that the employer - employee relationship ends, the termination can take effect from the date of termination or a future date specified in the order, but not from the backdated date.

The employee cannot be deprived of service benefits earned during his span of employment by compulsorily terminating the employment contract before it actually occurred.



Employee entitlement during the service period is protected by the regulations.

Retrospective dismissal from service deprives the rights and benefits of the employee earned during the employment period and is not justified in law.



Scroll down to read the detailed alert

- Mr. Bahadur Singh (“Mr. X”) had worked as a cleaner/ helper with various transport companies and applied for a driving license which was renewed time to time. During the renewal period, a license to drive heavy transport vehicle (trucks and buses) had been issued as he attained the age of 20 years. He was selected as a bus driver in Pepsu Road Transport Corporation (PRTC), Patiala (the company) w.e.f. 01 September 1970 (when he was at the age of 32 years). Mr. X got his driving license renewed from the Licensing Authority, Motor Vehicles, Ludhiana on 05 December 1996, which was renewed up to 01 September 1997.
- As per the service book, his date of birth has been recorded as July 20, 1938 and he was to be superannuated on July 31, 1996 viz. retirement age of 58 years. A show cause notice¹ has been issued to Mr. X asking to submit the details to substantiate his date of birth. Consequently, a birth certificate² was submitted as a supporting document before the company.
- Mr. X filed the affidavit for date of birth as per the earlier records of the service book viz. July 20, 1938, without taking any reference of birth certificate provided by the Registrar.
- Due to the impugned order of June 8, 1995 issued by the company, he was retired on December 31, 1994 retrospectively on the *assumption that his date of birth should have been in December 1936* as eligibility to issue the driver license of heavy transport vehicle is after attaining the age of 20 years and above.

Ruling:

- During the hearing and course of the arguments, reliance was placed on the Supreme Court³ ruling whereby while setting aside the compulsory retirement order, the Hon’ble Supreme Court has held that retirement of the employee retrospectively on completion of 58 years is not justified in law.
- Reliance was also placed on a couple of High Court⁴ rulings in which the scope of Articles 233, 234 and 235 of the constitution of India were discussed. It was held that the *High Court can only be a ‘Recommending Authority’ to the Governor/ responsible body and cannot itself pass such an order*. Further, the High Court retains the powers of ‘disciplinary control over the subordinate judiciary’ but the actual implementation of such recommendations lies in the hands of the Governor/ responsible body.
- Relying upon High Court recommendation on the retirement age of 58 years, retrospective retirement of the employee at the age of 58 years cannot be sustained as he already attained the age of 60 years while in service.
- The Hon’ble High Court also held that *“Relationship of master and servant can be brought to an end from the date of order or from subsequent date but not with effect from an earlier date”*. The employee cannot be deprived of the benefits by termination of his service with retrospective effect which he earned during the period of service. The order of dismissal from service cannot be passed retrospectively grossly impacting *employee’s right and benefits accrued during the service*.
- Based on the judicial precedents, the Court held that the date of retirement of Mr. X shall be considered from ‘the date of passing the impugned order viz. June 8, 1995 and not 31 December 1994 (i.e. the date of attaining the compulsory retirement age). Accordingly, the consequential service benefits shall be granted to Mr. X from January 1, 1995 till June 8, 1995 within a period of 03 months from the date of receipt of certified copy of this order.

¹ March 1, 1995 by the General Manager, PRTC Patiala

² Issued by the Registrar (Births and Deaths), Bhatinda with date May 18, 1938

³ P.D. Goel vs High Court of Himachal Pradesh through its Registrar General”, 2017(4) SCT 55

⁴ Registrar (Admn.), High Court of Orissa, Cuttack vs. Sisir Kanta Satapathy (Dead) by LRs. and Anr. (1999) 7 SCC 725; Rajinder Singh vs Board of School Education Haryana and another”, 1996(4) RSJ 417.

Comments:

Protecting employee rights and service benefits has always been a crucial factor under Indian regulations. This ruling protects the employee's rights and benefits earned during the service period, which cannot be taken away by backdating the termination.

Employers must take a cognizance of this judgement regarding employee rights and benefits accrued during the service period, which are protected under the law as retroactive termination is not permitted.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which is a separate and independent legal entity, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

This communication contains general information only, and none of DTTL, its global network of member firms or their related entities is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication.

© 2024 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited