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I am a shopkeeper and have seven men working in my shop. About a month ago, while taking out clothes from a high shelf, one of my workers fell down and broke one of his arm and had to be taken to the hospital. The employee's wife is now claiming compensation and has also filed a civil suit for damages. Please tell me whether I am liable to pay compensation as well as damages in the event the case in civil court is decided against me.

Please note that the law governing employees' compensation (for injury caused by accident) is provided in the Employees' Compensation Act, 1923 ("Compensation Act"). According to Section 3 of the Compensation Act, an employer is liable to compensate the employee for an injury caused to him/her by an accident arising out of or in the course of his/her employment. It is clear that taking out clothes from the high shelf was part of the duty of the employee concerned and was well within the scope of his employment. However, from your query, I note that he has also filed a civil suit for damages against you. In this regard, you may

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note that no claim for compensation is maintainable in respect of any injury, if the employee has already instituted civil proceedings for damages in respect of the same injury against the employer. Therefore, you are not liable to pay any compensation under the Compensation Act unless the court orders you to do the same.

I am thinking of setting up a plant for manufacturing textiles in Rajasthan. I understand about trade unions in factories, but am confused about the term collective bargaining. Please let me know the meaning of the same.


The term "collective bargaining" refers to the legally recognized right of workmen to collectively negotiate better working conditions, including wages, bonus, etc. from the management. In industrial relations, the position of a workman is unequal to that of the management, and a workman alone cannot be expected to successfully bargain better working conditions from the employer. For this reason, the concept of collective bargaining on the part of the workmen is an important and crucial means by which workmen strike a bargain for better wages, bonuses as well as working conditions from the management.

Collective Bargaining in India has been the subject matter of industrial adjudication since long. In *Karol Leather Karamchari Sangathan v. Liberty Footwear Company* (1989) 4 SCC 448, the Supreme Court observed that, "Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion." According to the Court, the Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining. In *Ram Prasad Viswakarma v. Industrial Tribunal* (1961) 1 LLJ 504 the Court observed that, "It is well known how before the days of 'collective bargaining', labour was at a great disadvantage in obtaining reasonable terms for contracts of service from its employer. As trade unions developed in the country and

collective bargaining became the rule, the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts, but in the matter of taking disciplinary action against one or more workmen and as regards of other disputes."

In *Bharat Iron Works v. Bhagubhai Balubhai Patel* (1976) Lab. 1.C.:4[S.C.], it was held that "Collective bargaining, being the order of the day in the democratic, social welfare State, legitimate trade union activities, which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activities can flow in a healthy channel only on mutual cooperation between the employer and the employees and cannot be considered as irksome by the management in the best interests of its business. The dialogue with representatives of a union helps striking a delicate balance in adjustments and settlement of various contentious claims and issues." These definitions only bring out the basic element in the concept i.e., civilized confrontation between employers and employees.

What is the protection provided to women under the Industrial laws?

The Constitution of India aims to secure social, economic and political justice along with equal opportunities and status to all citizens irrespective of their sex. Article 15(3) of the Constitution empowers the state to make special provisions for women and children, and hence the state has passed various laws to protect the interest of women and also various benefits are provided to women like maternity benefits, prohibition of work in dangerous operations, equal pay for equal work. Women have been provided benefits and/or protection under, amongst others, The Factories Act, 1948, Mines Act, 1952, Employees State Insurance Act, 1948, Maternity Benefit Act, 1961 and Equal Remuneration Act, 1976. 

To Be In Gratitude Thereof

- BY KRISHNA VIJAY SINGH

Gratuity is a retirement benefit paid as gratitude by the employer to his employee on the termination of services. Such a unique kind of protection prevalent in Indian organised sector involves payment of money in lump sum to a person who has rendered more than five years of continuous service to the employer. Gratuity is given the force of law by the Payment of Gratuity Act, 1972 ('Act'). The Act is applicable to all establishments including factories, mines, oilfields, plantations, ports, railway companies, shops and other establishments where numbers of employees are ten or more in any day of the preceding 12 months.

The employer is required to pay the amount of gratuity within thirty days from the date it is billed to the person to whom the gratuity is allocated. However, it is pertinent to note that the Labour Ministry has moved a proposal to increase the gratuity ceiling from INR 10 lakh to INR 20 lakh by amending the Payment of Gratuity Act, 1972. Gratuity limit for the Central Government employees has already been increased to INR 20 lakh after the implementation of the Seventh Pay Commission in 2016. However, there was no change in gratuity limit for private sector employees which is still at INR 10 lakh and the Central Government, therefore, is considering the amendment.

The Act also makes a provision for forfeiture of gratuity, wholly or in part, on termination of the services by the employer for any act or wilful omission or negligence that has caused any damage or loss to the employer's property. The employer can also forfeit gratuity, if an employee indulges in any riotous or disorderly conduct or other

act of violence, or for moral turpitude in the course of employment and the employer has terminated his services on account of the same.

However, the term 'moral turpitude' referred to above, on account of which an employee may be denied the benefit of gratuity, could have a wide meaning, and it is



necessary to understand the acts which will constitute moral turpitude for the purposes of gratuity. The term 'moral turpitude' can be generally understood as an act or behaviour that gravely violates the sentiment or accepted standard of community, or a quality of dishonesty, or other immorality that is determined by a court of law to be present in the commission of a criminal offence.

The Government of Haryana while accepting the recommendations of the

Central Government prepared a list of offences which were considered involving moral turpitude for information and guidance in that connection.

Later the Haryana Government while modifying its earlier decision streamlined determination of moral turpitude as follows:

- Whether the act leading to a conviction was such as could shock the moral conscience of society in general.
- Whether the motive which led to the act was a base one.
- Whether on account of the act having been committed, the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

The decision in each case will, however, depend on the circumstances of the case and




the competent authority has to exercise its discretion while taking a decision in accordance with the above-mentioned principles.

In the case of Dharam Singh (deceased and represented by his widow/ respondent, the deceased was working as a teacher in a government school. He was convicted along with two others under Section 304 of IPC. On the said basis, Dharam Singh was dismissed

from the services, without holding any enquiry on the ground that he was convicted for an offence involving moral turpitude. During the pendency of the appeal, Dharam Singh expired and his appeal abated. Subsequently, the appeal of co-accused (whose role was admittedly similar to that of Dharam Singh) was partly allowed and they were acquitted under Section 304 of IPC but were convicted under Section 323/34 of IPC. After the acquittal of the co-accused, the respondent called upon the State to set aside order of dismissal of her husband (Dharam Singh) in light of the findings of the appellate court and to release all service benefits to which her deceased husband was entitled, which was rejected by the State. Eventually, Single Judge of the High Court, relying on the instructions issued by the State, wherein offences involving 'moral turpitude' stood enlisted, observed that offence under Section 323 of IPC did not fall under the category of offences, and role attributed to the deceased husband of the respondent was similar to that of his co-accused and death in the case was not because of the injuries attributed to the accused, but it was because of renal failure. The view of the Single Judge of High Court was affirmed by the Division Bench of the High Court, which held respondent to be entitled to all the consequential benefits.

Further, in the case of *State of Haryana and another v. Ram Chander* following principles were culled out:

- Those who are involved in moral turpitude should not be taken in government service.
- Those who are convicted of offences, which do not involve moral turpitude or those who are released under the Probation of Offenders Act, should not suffer any disability in respect of obtaining government service.
- With regard to those convicted of offence not involving moral turpitude, laying down uniform policy is not possible and it is left to the appointing authority in each case to make detailed inquiry and satisfy himself fully that ex-convict has reformed himself after release from jail and nothing adverse about his conduct has come to notice after his conviction. Such an inquiry is to be made invariably through Police Department.
- Discretion is given to the competent authority while taking decision in accordance with principle mentioned in these instructions. 

¹ Section 4 of the Payment of Gratuity Act, 1972.

² Section 1 of the Payment of Gratuity Act, 1972.

³ Section 4(6) of the Payment of Gratuity Act, 1972.

⁴ *Pawan Kumar v. State of Haryana and another* (1996) 4 SCC 17

⁵ LPA No.95 of 2013 (O&M) decided on 18.02.2013