

*Roll No.* .....

**OPEN BOOK EXAMINATION**

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

*Total number of printed pages : 6*

**NOTE :** *Answer ALL Questions.*

**1. Case Study :**

Kiran, the Petitioner (hereinafter referred to as the workman), was appointed in 2011 as a helper in TVS Auto Ltd. (hereinafter referred to as the Company). The case of the workman is that he was on medical leave with effect from 29th September 2018 to 1st October 2018 and he had furnished ESI Doctor's Certificate. According to the workman, he was arrested by the police on 2nd October 2018 for an offence punishable under Section 380 of the Indian Penal Code for committing theft outside the factory premises and he was in police custody up to 13th October 2018 and he was subsequently acquitted of the charge of theft. When he went to the factory on 14th October 2018 to resume his work, he was not allowed to do so. He submitted his written explanation on 16th October 2018 for his absence. The services of the workman were terminated by the Company on 24th October 2018. The order of termination reads as under :

‘Since you have deserted your post with effect from 2nd October 2018, your name has been removed from the company's muster roll with immediate effect.’

: 2 :

The workman raised a reference before the Labour Court at Nagpur. However, it was rejected by a judgement and award dated 25th October 2019. He therefore, filed a written petition in the High Court, which was allowed but the matter was remanded back to the Labour Court permitting him to amend the date of termination. A statement of claim thereafter was filed by the workman.

In the written statement, it was contended by the company that the workman had deserted his employment and therefore, the company has removed his name from the muster roll. It was stated that though the workman presented himself on 14th October 2018, he did not produce sufficient evidence to show that he was arrested by the police. It was also contended that the workman had remained absent without leave on earlier occasions also and he was previously warned for such irregularities. It was contended by the company that, therefore, the workman had committed misconduct as per the Standing Orders and hence it was not necessary to hold any enquiry since the action was taken on undisputed facts. The Labour Court by its judgement and award partly allowed the award. It was held that the services of the workman were legally terminated by the company. However it was held that the workman was entitled to get full back wages.

Aggrieved by the award and judgement, the workman filed writ petition in the High Court of Bombay against the same on the ground of the Labour Court validating the order of termination. The Company also filed a writ petition against the order awarding full back wages to the workman.

: 3 :

On consideration of the above facts, answer the following questions :

- (a) (i) Whether the order passed by the Labour Court validating the termination from the work is legal or illegal ? Decide.
- (ii) Whether the contention of the company that no enquiry was required before issuing the order of termination of workman is justifiable one ?
- (iii) Whether termination for habitual absence could be made without enquiry ?  
(3+3+2=8 marks)
- (b) (i) Whether striking off the name of workman from the muster roll amounted to retrenchment ?
- (ii) Whether the order of the Labour Court could be modified to include reinstatement with back wages ?  
(4+4=8 marks)
- (c) (i) Whether the prosecution of the workman on a criminal case could be a justifiable ground for absenteeism ?
- (ii) Whether termination amount to retrenchment ? Briefly explain.  
(4+4=8 marks)
- (d) (i) State whether the workman is entitled to claim gratuity.
- (ii) Whether the contention of the company that the workman would not be entitled to the full back wages is correct ?  
(4+4=8 marks)
- (e) (i) State in brief the objectives of Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.
- (ii) State the issues raised by the workman and the company in their writ petitions before High Court of Bombay.
- (iii) Re-instatement or compensation of lump sum amount, which one according to you is ideal to meet the ends of justice ?  
(2+3+3=8 marks)

2. (a) The election of a Trade Union office bearers was held at the factory premises. Apart from the workers employed in the factory, 2 trade union members and a non-employee of the factory desired to become the office bearers. One of the conditions for the eligibility to contest for the office bearer is the contribution to general fund and political fund. The other members objected to an outsider becoming the office bearer. Is it proper for a non-worker to contest for the post of office bearer ? Explain.
- (b) Bharath, the Managing Director of a company unilaterally announced the target in the Production Section that 9000 units of a particular type of Annunciator are to be manufactured in a month as against the normal production of 5000 units. The workers of the company resisted the move and collectively decided to go on strike instantly. The Managing Director threatened to terminate them from services.

Answer the following questions :

- (i) What procedure the Managing Director should follow while setting the increased production targets ?
- (ii) Whether the decision to go on instant strike is legal ? State the procedure.
- (6 marks each)*
3. (a) Surya Electrical Industries had its own Standing Orders duly approved by the Certifying Authority. After 5 years of its application, the Surya Electrical Industry was acquired by Shashi Electrical Industries. After the acquisition, Shashi Industries desires to enforce its own Standing Orders to the employees of the newly acquired Surya Electrical Industries.
- (i) Is there any time limit for the applicability of Standing Orders ? State the procedure for its validity.
- (ii) Whether the Standing Orders of the Surya Electrical Industries are applicable to its employees even after the change of ownership ?

*(6 marks)*

: 5 :

- (b) Mukund Industries, manufacturing auto parts was formed in the year 2021. Its workforce strength stood at 324. It had provided fencing at all places where machines were installed for safety reasons. It so happened that one of the employees, in the absence of the supervisor, and that too without the knowledge of the supervisor, had removed the fencing. As a consequence, it resulted in an accident, causing injury to a worker. State with relevant legal provisions as to the liability of compensation. Are Mukund Industries liable for the violation of safety rules ? (6 marks)
4. (a) Sapta Swara, a Music Band gives musical orchestra and concerts on occasions like marriage, college functions, receptions and other social functions which helped the music band to claim fixed sum from the organisers. The musicians and other artists were paid fixed wages for their performances. The Music Band seeks exemption from Employees' State Insurance Act, 1948. Decide as to the applicability of the Act and whether they are entitled to exemption ?
- (b) Varun, an employee in a factory employing more than 60 workers was about to complete 5 years of continuous service for becoming entitled to gratuity. But he joined with the other workers in strike, which resulted in break in service, i.e. 18 days short of continuous period of 5 years. The factory management decided to treat it as illegal strike and terminated Varun among others from the service after complying with the procedure.
- (i) Whether payment of Gratuity Act is applicable to the factory ?
- (ii) State whether Varun is entitled to get Gratuity ?

(6 marks each)

5. (a) A company is carrying on its work in 3 industrial units and all the 3 industrial units are located in the same place of the establishment. The first unit manufactures Metal Sheets, the second one Milling Paddy and the third one is a Saw Mill. Out of these only the first unit was an industry covered under the schedule of the Provident Fund Act of 1952. The PF Authorities however issued direction to the company to apply the Provident Fund scheme to the other two units as well.
- (i) Decide on the applicability of the Provident Fund & Miscellaneous Provisions Act, 1952.
- (ii) Whether the Provident Fund authorities are correct in issuing directions for its application to the company ? Refer to legal provisions.
- (b) Sriram Industries is carrying on its operations by employing employees which included even child workers. Refer to the working hours and penalty provisions relating to employment of child workers under the Child and Adolescent Labour (Prohibition and Regulation) Act 1986 ?
- (6 marks each)*
6. (a) Explain the purpose of enacting the code on wages. Based on Gender whether the employer can have different policies for recruitment and remuneration.
- (b) Explain the pre-requisites for claiming social security and welfare schemes under the Unorganised Workers Social Security Act, 2008.

*(6 marks each)*