

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Labour Law-II
Semester-VIII (Batch: 2013-18)

End Semester Examination: April-May 2017

Date: 1st May, 2017

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Part-A
(Answer all the Questions)

Marks

- Q.1 State with reasons whether the following statements are **True** or **False**. (10x1=10)
- (a) The minimum wages may be paid in kind as per the provisions under the Minimum Wages Act, 1948.
 - (b) Withholding of increment is a deduction from wage under the Payment of Wages Act, 1936.
 - (c) Under the Equal Remuneration Act, 1976 a settlement arrived at between the management and employees can be a valid ground for effecting discrimination on the ground of sex in employment and service.
 - (d) The women employees who are engaged on casual basis or on muster roll on daily wage basis are also entitled for the benefit under the Maternity Benefit Act, 1961.
 - (e) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also provides for monetary settlement.
 - (f) An *establishment* under the Payment of Gratuity Act, 1972 includes only the commercial establishment.
 - (g) The daily wage employee is also covered under the word *employee* as defined under Section 2 (13) of the Payment of Bonus Act, 1965 and is also entitled to claim bonus.
 - (h) Cost of living index is not a strict basis for fixing the rates of minimum wages and if not strictly adhered to, it does not constitute a breach of statutory duty.
 - (i) The Contract Labour (Regulation and Abolition) Act, 1970 will not be applicable to an establishment in which work only of an intermittent or casual nature is performed and such work does not exceed the total of 120 days in a year, and in case of seasonal establishment of 60 days in a year.
 - (j) Deduction from wages may be made without written authorization of the employed person for the payment of the membership fee of any registered trade union.

Part-B
Answer **any four** Questions

- Q.2 (a) Mr. Chirag Joshi was in service of Oil and Natural Gas Commission, (06)
("Commission"). He was holding the post of Additional Director (Finance and

Accounts) prior to his retirement. As an employee of the Commission, he was allotted quarters on December 10, 2008. He retired from service on reaching the age of superannuation with effect from February 28, 2013. As per the terms and conditions of service, after the retirement, an employee had to vacate the residential accommodation given to him by the Commission. Accordingly, Mr. Joshi was informed by the Commission that he had to vacate the quarters. It was the policy of the Commission to grant four months' time to retain quarters by an employee after retirement. Accordingly, Mr. Joshi was asked to handover vacant and peaceful possession of the quarters to the Commission latest by 30th June, 2013. It is an admitted fact that he did not vacate the quarters. It had also come on record that he made representations to permit him to continue to occupy the quarters but those representations were rejected. However, Mr. Joshi did not vacate the quarters. Consequently, the eviction proceedings were initiated against Mr. Joshi. In those proceedings, an undertaking was given by him that he would vacate the quarters latest by May 30, 2014. Pursuant to the said undertaking, he vacated the quarters on May 16, 2014. Eviction proceedings were then dropped.

Mr. Joshi claimed an amount of gratuity payable to him. According to him, he was entitled to Rs. One lakh towards payment of gratuity. The Commission, however, deducted an amount of Rs.53,632 towards unauthorized occupation charges of official accommodation from July 1, 2013 to May 15, 2014 at the rate of Rs.5,100 being 75 per cent of the basic pay of Rs.6,800 per month. Mr. Joshi has claimed that, it was not open to the Commission to deduct any amount payable to him towards gratuity.

Whether Mr. Joshi can succeed in his claim? Decide with the help of the relevant cases and provisions under the Payment of Gratuity Act, 1972.

- (b) Critically evaluate the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (04)

- Q.3 (a) Rameshwaran and Son's was a private limited company. Mrs. Bhagwanti was an employee employed by the company. She had availed maternity leave in August, 2013 and she had delivered a child on 29th September 2013. She claimed maternity benefit from the company under the Maternity Benefit Act, 1961, (referred as 'Act'). Since she had actually worked only for 76 days apart from four half days during 12 months immediately proceeding the date of the delivery, the management of the company took the stand that she was not entitled to maternity benefit under Section 5(3) of the Act. (04)

She has claimed that the four half days that she has availed should also be treated as full days and so calculated, she must be deemed to have worked for 80 days within 12 months immediately preceding the date of her delivery.

Whether Mrs. Bhagwanti can succeed in her claim? Decide with the help of relevant case laws and the applicable provisions of the Maternity Benefit Act.

- (b) Critically evaluate the Amendments introduced in the Maternity Benefit (Amendment) Act, 2017. (06)

- Q.4 (a) An employee had resigned from the services of Malwa Mills, Indore. While in service the employee had taken loan for building a house. The employer, after resignation of the employee adjusted certain salary amount due to be paid to the employee against the house building loan. Decide whether the employer can adjust the amount due in such a manner. Is it the authorized deduction under the Payment of Wages Act, (03)

1936?

- (b) What are the duties of the employer under the Equal Remuneration Act, 1976? (03)
- (c) What is the procedure for fixing and revising the minimum wages under the Minimum Wages Act, 1948? (04)
- Q.5 (a) Can Courts ask the appropriate Government to consider for absorption of contract workers because they are working in an establishment for a continuous and longer period? (05)
Answer this question in light of sub-section(2) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and the observations made by the Apex court in Steel Authority of India Ltd. and others vs. National Union Waterfront Workers and others, (2001) 7 SCC.
- (b) What consequences can follow when the contractor who is responsible to obtain license but has failed to do so and as such can the workers of the contractor seek their regularization? (05)
- Q.6 (a) The Rajasthan State Co-operative Land Development Bank, an Apex Bank is governed by the Rajasthan Co-operative Societies Act, 1965. It transacted its business mainly through Primary Agricultural Co-operative banks (Primary Banks) which are its members. Staff of the primary banks except Class IV employees were drawn from the Apex Bank out of the cadre maintained by it in terms of Clause 70 of the model by-laws applicable to the primary banks. Such employees working with the primary banks raised a demand stating that, they are entitled to bonus at the rate applicable to employees of the Apex Bank. The claim was resisted by the primary banks on the ground that they are separate entities with separate balance sheet and profit and loss accounts and have a distinct cooperative and corporate identity under the Act and, therefore, it is not required to pay bonus at the same rate as the employees of the Apex Bank in terms of Payment of Bonus Act. Whether the employees working with Primary Agricultural Co-operative banks (primary banks) are entitled to bonus at the same rate at which it was paid to employees working in the Apex Bank? Decide with relevant provisions of the the Payment of Bonus (Amendment) Act, 2015. (06)
- (b) Discuss the principle of *set on and set off of allocable surplus* provided under Section 15 of the Payment of Bonus (Amendment) Act, 2015. (04)
