

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: **Labour Law II**

**Semester- VIII (Batch: 2019-24)**

**End Semester Examination: May 2023**

**Date: 04<sup>th</sup> May, 2023**

**Duration: 3 hours**

**Max. Marks: 50**

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word limit: 10 marks: 700-750 words, 4 marks: 350-400 words, 3 Marks: 250-300 words..

Answer **any five** of the following questions.

- |     |  | <b>Marks</b>      |
|-----|--|-------------------|
| Q.1 | <p>a) Mr. Ganga and Mrs. Nirmala work in a paddy field owned by Mr. Jatin Singh. After working there for 10 years, they were offered an opportunity to work for Mr. Karan, who was offering them higher pay for working 5 days a week. However, they were not permitted to take the said opportunity. Does it amount to bonded labour? State the reasons for your answer.</p> <p>b) Pradip was a farmer. There was a drought and he could not bring good harvest to provide enough for his family. He went to borrow Rs. 1000 from the local money lender, Mr. Lal, in 1980. Pradip and his family were still working for Mr. Lal in 1995. After Pradip's death, his son Santosh and his family continued to work for the money lender, without any payment, for the loan that his father had borrowed in 1980. Does it amount to bonded labour? State the reasons for your answer.</p> <p>c) Apart from the Constitutional provisions, specific legislation has also been enacted to prohibit bonded labour system. (The Bonded Labour System (Abolition) Act, 1976). The Minimum Wages Act of 1948 establishes a minimum wage for specific, defined occupations and mandates that anyone working over the 'normal working day' be paid overtime. Despite all these legislative efforts, the bonded labour system is still in existence. Express your views on shortcomings in the existing legislative mechanism adopted in India to abolish the bonded labour system.</p> | <p>(3+3+4=10)</p> |
| Q.2 | <p>Mrs. X possessed educational qualifications of M.A, B.Lib. and B.Ed. She was appointed as a Junior Librarian on <i>ad hoc</i> basis in Sub Divisional Library under the control of Mr. Y through the agency of local employment exchange on 24/12/2014. The post against which the appointment was made is a temporary post and according to Mrs. X sanction for its continuance had been granted by the government till 28/ 2/2016.</p> <p>In the letter of appointment it was made clear that the appointment of Mrs. X shall be purely on temporary basis for a period of 6 months or till any regular candidate joins whichever event occurs earlier. As a part of service conditions, Mrs. X got herself medically examined to declare the medical fitness for the post. The Chief Medical Officer who did not discover that she has any disease (communicable or otherwise) weakness or bodily infirmity except pregnancy of 10-12 weeks. This was however, considered not to be a disqualification for the appointment to the post. Mr. Y addressed a letter to the Director of Higher Education seeking advice as to whether the services of Mrs. X should be continued or terminated since she is pregnant. Later, on relying on the</p>   | <p>(10)</p>       |

advice of Director of Higher Education the order of termination simply on the ground of the pregnancy was issued to Mrs. X vide order dated 6/5/2015. Mrs. X has challenged the order of termination of her services on account of her pregnancy. She has claimed that the termination is illegal. Mr. Y has contended that since Mrs. X was employed on purely temporary *ad hoc* basis her services can be terminated at any time. It was further contended that she could not be granted maternity leave. Maternity leave is not admissible to female government employees appointed on *ad hoc* basis. Therefore, her claim is not sustainable.

On the basis of the provisions under the Maternity Benefit (Amendment) Act, 2017, decide whether the claim of Mrs. X is sustainable.

- Q.3 Critically evaluate the provisions under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 with special reference to prohibition of employment of children in any occupations and processes (Section 3). (10)

Do you think that with the amendments in the Act, the child labour will be completely eradicated? Suggest the measures to be adopted in order to solve the problem of child labour in India.

- Q.4 A company is having more than 250 workers on its rolls. As per Section 46 of the (10)

Factories Act, 1948 and the Rules framed thereunder, the company has to provide and maintain a canteen for its employees. The company has provided all facilities for running a canteen. The right to run the canteen was being given on contract to others from time to time. Mr. X was a contractor engaged for the said purpose and he was running the canteen upto 18/4/2012. From 19/4/2012 to 28/6/2012 the workers of the company themselves were running the canteen. From 29/6/2012 a new contractor Mr. Y took up the responsibility of running the same. At no point of time had the company run the canteen by itself.

The contractors who took up the responsibility of running the canteen were engaging their-own workmen and they were being paid by the contractors. While so, some disputes arose between Mr. X and the workers engaged in the canteen regarding the payment of bonus, gratuity and arrears of wages for a short period. Consequent on those disputes, the following issues were referred to the Industrial Tribunal for its decision by the Government.

- (i) Settlement of gratuity to the canteen workers of the company.
- (ii) Bonus and arrears of wages to the contract workers for the period upto 28-6-2012.

The Tribunal held that the management will pay bonus, gratuity and the wages due to the workmen as the principal employer.

The contention raised by the principal employer is that the canteen was run by the contractor and the employees of the canteen were engaged by the contractor. The workmen can never be considered as employees of the management; therefore the said is not liable to pay anything other than the actual wages due to the workmen if it is found that the contractor failed to give wages to their employees.

On the basis of the above-stated facts, decide as per the provisions under the Contract Labour (Regulation and Abolition) Act, 1970 who has the liability to pay the bonus, gratuity and wages due to the workmen of the contractor.

- Q.5 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 has laid down the inquiry procedure and rules in detail that are to be followed by Internal Committee on receipt of complaint of sexual harassment. Elaborate the inquiry procedure followed by the Internal Committee. (10)
- Q.6 Mr. X has employed 60 workers (35 women and 25 men) to make pickle in temporary rented premises. The work in the premises started in the year 2021. The workers had to work in the temporary premises and were not at liberty to work at their houses. Their attendance were noted in the premises and they had to work within the prescribed hours. Though they were not bound to work for the entire period and could come and go away when they liked; but if they came after midday they were not supplied with raw material and thus not allowed to work even though the premises would close at 10 p.m. Further, they could be removed from service if they remain absent consecutively for 8 days. Payment of wages was made on daily rates according to the amount of work done. The normal daily hours fixed for the workers was 12 hours a day. The workers were also required to make their own arrangements for their food and drinking water. The women workers were bringing their children below the age of six years to work in the premises. The children were provided with the work of packing the pickle in the containers and seal them. One of the workers Mr. Y, who was working in the premises since the beginning, i.e., from the year 2021, applied for annual leave for 15 days and did not go to the work. Consequently, Mr X did not pay the wages to Mr. Y on the ground that he is not entitled for the wages for this period. (3+3+4=10)
- Mr. Y therefore has approached the authority under the Payment of Wages Act, 1936 for non-payment of wages. Mr. X contended that Mr. Y is not his workman and the temporary premises is not the factory under the Factories Act, 1948. Therefore, the claim of Mr. Y should be rejected.

On the basis of the above-stated facts, decide the following issues:

- a) Whether the temporary premises in the above-stated facts is a 'factory' within the meaning of the Factories Act, 1948 ?
- b) If yes, discuss the provisions under the Factories Act, 1948 that are being violated.
- c) Whether Mr Y is covered under the definition of 'worker' under the Factories Act, 1948?

\*\*\*\*