

ECONOMIC AND LABOUR LAWS

Time allowed : 3 hours

Maximum marks : 100

PART A

(Answer Question No.1 which is compulsory and any three of the rest from this part.)

Question 1

With reference to the relevant legal enactments, write short notes on any five of the following :

- (i) Export Promotion Council
- (ii) Combinations
- (iii) Advance authorisation scheme
- (iv) Calibration
- (v) Environmental audit
- (vi) Trade effluent
- (vii) Commercial purpose.

(3 marks each)

Answer 1(i)

Export Promotion Council

The basic objective of Export Promotion Council (EPC) is to promote and develop the exports of the country. Each EPC is responsible for the promotion of a particular group of products, projects and services. The major functions of the EPC are:

- To provide commercially useful information and assistance to members in developing and increasing exports;
- To offer professional advice to members in areas such as technology upgradation, quality and design improvement, standards and specifications, product development, innovation etc.
- To organise visits of delegations of its members abroad to explore overseas market opportunities;
- To organise participation in trade fairs, exhibitions and buyer-seller meets in India and abroad;
- To promote interaction between the exporting community and the Government both at the Central and State level; and
- To build a database on the exports and imports of the members.

Answer 1(ii)

Combination

The term combination has been used under the Competition Act, 2002. It has been given broad coverage to include acquisition of control, shares, voting rights, assets, merger or amalgamation. The acquisition of one or more enterprises by one or more

person or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises.

The thresholds limits for combination are specified in the Competition Act, 2002 in terms of assets or turnover in India and abroad, if

- (a) any acquisition where —
 - (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have, -
 - (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or
 - (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have, -
 - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or
- (b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if -
 - (i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,
 - (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or
 - (ii) the group, to which enterprise whose control has been acquired, or is being acquired would belong after the acquisition, jointly have would jointly have,
 - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

- (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India or turnover more than six billion US dollars including at least rupees fifteen hundred crores in India; or
- (c) any merger or amalgamation in which —
 - (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have, -
 - (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees, three thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or
 - (ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have, -
 - (A) either in India, the assets of the value or more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
 - (B) in India or outside India, the assets of the value of more than two billion US dollars including at least rupees five hundred crores in India or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India.

Section 6 of the Competition Act, 2002 prohibits any person or enterprise from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such combination would be void. In this context it may be noted that the Competition Act makes the notification of combination to Competition Commission of India mandatory.

Answer 1(iii)

Advance Authorisation Scheme

An Advance Authorisation is issued to allow duty free import of inputs, which are physically incorporated in the export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts etc. which are consumed/utilised in the course of their use to obtain the export product, may also be allowed under the scheme. However, the Director General of Foreign Trade, by means of Public Notice, may in public interest exclude any product(s) from the purview of advance Authorisation.

Advance Authorisations are issued on the basis of the inputs and export items given under SION. However, they can also be issued on the basis of Adhoc norms or self declared norms.

Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s) for import of inputs required in the manufacture of goods —

- (i) for Physical exports (including exports to SEZ); and/ or

- (ii) for Intermediate supplies; and /or
- (iii) to the main contractor for supply of goods to the specified categories under deemed export categories
- (iv) supply of stores on board of the foreign going vessel/ aircraft subject to the condition that there is specific SION in respect of the item(s) supplied.

Answer 1(iv)**Calibration**

According to section 2(a) of Standards of Weights and Measures Act, 1976, calibration means all the operations which are necessary for the purpose of determining the values of the errors of a weight or measure and, if necessary, to determine the other metrological properties of such weight or measure, and includes the actual fixing of the positions of the guage-marks or scale-marks of a weight or measure, or in some cases, of certain principal marks only, in relation to the corresponding values of the quantity to be measured.

The explanation to Section 2(a) clarifies that the calibration may also be carried out with a view to permitting the use of a weight or measure as a standard.

Answer 1(v)**Environmental Audit**

Rule 14 of the Environment Protection Rules, 1986 provides for the submission of environmental audit report. Accordingly, every person carrying on an industry, operation or process requiring consent under Section 25 of the Water (Prevention and Control of Pollution) Act or Section 23 of the Air (Prevention and Control of Pollution) Act or both or authorisation under the Hazardous Wastes (Management and Handling) Rules, 1989 is required to submit an environmental audit report in Form V for the financial year ending on 31st March every year on or before the 15th of May, beginning 1993 to the concerned State Pollution Control Board.

Answer 1(vi)**Trade Effluent**

As per Section 2(k) of the Water (Prevention and Control of Pollution) Act, 1974 Trade effluent includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system, other than domestic sewage.

The State Pollution Control Boards have been empowered to give directions to any person, who in its opinion is abstracting water from any such stream or well in the area in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, to give such information as to the abstraction or discharge at such times and in such form as may be specified in the directions.

Answer 1(vii)**Commercial purpose**

The purchase of goods can be said to be for a 'commercial purpose only if the goods have been purchased for being used in some profit making activity on a large-scale, and there is close and direct nexus between the purchase of goods and the profit-making activity. In *Laxmi Engineering Works v. P.S.G. Industrial Institute*, Supreme Court held that the explanation to Section 2(1)(d) of the Consumer Protection Act, 1986 is clarificatory in nature. It observed that whether the purpose for which a person has bought goods is a 'commercial purpose' is always a question of fact and to be decided in the facts and circumstances of each case. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

Question 2

State, with reasons in brief, whether the following statements are true or false. Attempt any five :

- (i) *A person can export or import without an importer-exporter code (IEC) number.*
- (ii) *The manufacture of a non-standard weight or measure is prohibited under the Standards of Weights and Measures Act, 1976.*
- (iii) *A reasonable opportunity of being heard must be afforded to a person before ordering confiscation of an essential commodity under the Essential Commodities Act, 1955.*
- (iv) *Trade practice includes a single or isolated action of any person in relation to any trade.*
- (v) *The Competition Act, 2002 does not prohibit dominance, but the abuse of dominant position.*
- (vi) *A trade mark may not distinguish the goods of one manufacturer or trader from similar goods of other manufacturers or traders.* (3 marks each)

Answer 2(i)**False**

Reasons : The Foreign Trade Policy prohibits the export or import by any person without an Importer-Exporter Code (IEC) number unless specifically exempted. The IEC number is granted on an application, by the competent authority in accordance with the specified procedure.

An application for grant of IEC number is required to be made in the prescribed form along with specified documents, by the Registered/Head Office of the applicant to the Regional authority under whose jurisdiction, the Registered office in case of company and Head office in case of others, falls.

Answer 2(ii)**True**

Reasons : Manufacture of non-standard weights or measures is prohibited under Section 22 of the Standards of Weights and Measures Act, 1976.

Section 22 of the Act provides that no weight or measure shall be made or manufactured unless it conforms to the standards of weights or measures established by or under the Act. The Central Government may permit making or manufacturing of any weights or measures not conforming to the standards, provided such weights or measures are manufactured exclusively for the purpose of any scientific investigation or research or for export and is made or manufactured under such conditions and restrictions as may be prescribed. Contravention of Section 22 is punishable under Section 52.

Answer 2(iii)**True**

Reasons : Before passing an order for confiscation under Section 6A, in terms of Sub-section (1) of Section 6B of the Essential Commodities Act, 1955 the owner of the essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized is required to be given a notice in writing informing him of the grounds on which it is proposed to confiscate the above goods to provide him an opportunity of making a representation in writing within a reasonable time and give him a reasonable opportunity of being heard in the matter.

Answer 2(iv)**True**

Reasons : As per Section 2(u) of the MRTP Act, 1969 Trade Practice means any practice relating to the carrying on of any trade and includes—

- (i) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,
- (ii) a single or isolated action of any person in relation to any trade.

Answer 2(v)**True**

Reasons : Section 4 of the Competition Act, 2002 dealing with abuse of dominant position is one of the most important provisions of the Act. In terms of section 4, the Act does not prohibit mere possession of dominant position, but only its abuse, thus recognizing that a dominant position may have been achieved through superior economic performance. Section 4, therefore, only applies to abuse of a dominant position, and does not restricts enterprise from holding and maintaining a dominant position or striving to achieve the dominant position.

As mentioned above, section 4 restrict an enterprise from abusing its dominant position.

In considering whether there is or has been an abuse of dominance, the Competition Commission has been empowered to conduct a detailed inquiry of the relevant market

concerned. Section 4(2) enumerates conditions/circumstances, the presence of which may render a dominant enterprise liable for abuse of its dominance.

Answer 2(vi)

False

Reasons : A Trade Mark distinguishes the goods of one manufacturer or trader from similar goods of others and therefore, it seeks to protect the interest of the consumer as well as the trader. A trade mark may consist of a device depicting the picture of animals, human beings etc., words, letters, numerals, signatures or any combination thereof. Since a trade mark indicates relationship in the course of trade, between trader and goods, it serves as a useful medium of advertisement for the goods and their quality. The object of trademark law is to permit an enterprise by registering its trademark to obtain an exclusive right to use, share, or assign a mark.

Section 29 of the Trade Marks Act, 1999 clearly states that a registered trade mark is infringed, if

- (a) the mark is identical and is used in respect of similar goods or services; or
- (b) the mark is similar to the registered trade mark and there is an identity or similarity of the goods or services covered by the trade mark; or
- (c) the trade mark is identical and is used in relation to identical goods or services;

and that such use is likely to cause confusion on the part of the public or is likely to be taken to have an association with the registered trade mark.

Question 3

(a) *Distinguish between any two of the following :*

- (i) 'Certification trade marks' and 'collective trade marks'.
- (ii) 'Duty free replenishment certificate' and 'duty entitlement passbook scheme'.
- (iii) 'Provisional specification' and 'complete specification' under the Patents Act, 1970. (5 marks each)

(b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*

- (i) *The Consumer Disputes Redressal Forum shall not admit a complaint unless it is filed within _____ years from the date on which the cause of action has arisen.*
- (ii) *Indian parties are prohibited from making investment in a foreign entity engaged in _____.*
- (iii) *The company which has exported goods is required to realise the full value of goods within _____ days.*
- (iv) *For setting-up an EOU, three copies of the application in the prescribed form may be submitted to the _____.*
- (v) *The State Commission under the Consumer Protection Act, 1986 can entertain complaints where the value of the goods or services and the*

compensation, if any, claimed exceeds Rs. _____, but does not exceed Rs. _____. (1 mark each)

Answer 3(i)

Distinction between Certification Trade Marks and Collective Trade Marks

Section 2(1)(e) of the trade Marks Act, 1999 defines the term certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person.

Section 2g of the Trade Marks Act, 1999 defines the term collective marks means a trade mark distinguishing the goods or services of members of an association of person not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others.

Sections 69 to 78 deal with registration of certification trade mark. The purpose of certification trade mark is to show that the goods on which the mark is used have been certified by some competent person in respect of certain characteristics of the goods such as origin, mode of manufacture, quality, etc. The proprietor of a certification trade mark does not himself deal in the goods. A certification trade mark may be used in addition to the users own trade mark on his goods.

Sections 61 to 68 contain provisions relating to the registration of Collective trade marks. These sections provide for registration of a collective mark which belongs to a group or association of persons and the use thereof is reserved for members of the group or association of persons. Collective marks serve to distinguish characteristic features of the products or services offered by those enterprises. It may be owned by an association which may not use the collective mark but whose members may use the same. The association ensures compliance of certain quality standards by its members, who may use the collective mark if they comply with the prescribed requirements concerning its use. The primary function of a collective mark is to indicate a trade connection with the Association or Organisation.

Answer 3(ii)

Distinction between Duty Free Replenishment Certificate and Duty Entitlement Passbook Scheme

DFRC is issued to a merchant-exporter or manufacturer-exporter for the import of inputs used in the manufacture of goods without payment of basic customs duty. However, such inputs are subject to the payment of additional customs duty equal to the excise duty at the time of import. DFRC is issued on minimum value addition of 25% except for items in gems and jewellery sector for which prescribed value addition is applicable.

The objective of Duty Entitlement Passbook Scheme (DEPB) is to neutralise the incidence of Customs duty on the import content of the export product. The neutralisation has been provided by way of grant of duty credit against the export product.

DFRC may be issued in respect of exports for which payments are received in non-convertible currency. Such exports have, however, been made subject to value addition and prescribed conditions.

In fact, DFRC is issued only in respect of products covered under the Standard Input Output Norms (SION) as notified by DGFT. DFRC is issued for import of inputs as per SION as indicated in the shipping bills. The validity of such authorisation is 24 months.

The holder of DEPB has been given an option to pay additional customs duty, if any, in cash as well. The DEPB is valid for a period of 24 months from the date of issue. The DEPB and/or the items imported against it are freely transferable. The transfer of DEPB should however be for import at the port specified in the DEPB.

Normally, the exports made under the DEPB Scheme are not entitled for drawback. However, the additional customs duty/excise duty paid in cash or through debit under DEPB is adjusted as CENVAT Credit or Duty Drawback.

Answer 3(iii)

Distinction between Provisional Specification and Complete Specification

A provisional specification is a document, which contains the description regarding the nature of an invention. The description however does not contain the details regarding the invention. Also it does not contain the claims. The provisional specification is filed to claim the priority date of an invention. The advantages of a provisional specification is that it can be filed as soon as the patent is conceived and for the recorded of priority date. But the application is only examined after the complete specification has been filed. Section 9 of the Patents Act, 1970 stipulates that where an application for a patent (not being a convention application or an application filed under PCT designating India) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed, the application shall be deemed to be abandoned.

Complete specification is the document, which contains the detailed description of invention along with the drawings and claims. Also the description regarding prior art is included in the complete specification.

Section 10 dealing with contents of Specifications provides that every specification, whether provisional or complete, shall describe the invention and begin with a title sufficiently indicating the subject matter to which the invention relates. Every complete specification is required to -

- (a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
- (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection;
- (c) end with a claim or claims defining the scope of the invention for which protection is claimed; and
- (d) be accompanied by an abstract to provide technical information on the invention.

Answer 3(b)

- (i) The Consumer Disputes Redressal Forum shall not admit a complaint unless it is filed within **2(two)** years from the date on which the cause of action has arisen.
- (ii) Indian parties are prohibited from making investment in a foreign entity engaged in **Real estate or banking business** .
- (iii) The company which has exported goods is required to realise the full value of goods within **12 months / 365** days.
- (iv) For setting-up an EOU, three copies of the application in the prescribed form may be submitted to the **Development Commissioner** .
- (v) The State Commission under the Consumer Protection Act, 1986 can entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds Rs.**Twenty lakh** , but does not exceed Rs.**one crore** .

Question 4

- (a) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on the following:*
 - (i) *Naresh, an Indian citizen, is interested in sending Rs. 10,000 to his sister residing in USA as birthday gift.*
 - (ii) *A person resident outside India desires to contribute Rs. 10 lakh as capital in a firm engaged in software business in India.*
 - (iii) *An Indian company intends to open a foreign currency account in India as well as outside India.*
 - (iv) *A company incorporated in USA desires to establish its manufacturing unit in special economic zone in India.*
 - (v) *Dinesh, an Indian citizen, wants to use his international debit card for withdrawal of cash during his visit abroad.* (1 mark each)
- (b) *Enumerate the heads under which compensation for damages may be claimed from the National Environment Tribunal constituted under the National Environment Tribunal Act, 1995.* (5 marks)
- (c) *Do the following acts constitute infringement of copyright under the Copyright Act, 1957 :*
 - (i) *Making or publishing of a painting, drawing, engraving or photograph of a work of architecture.*
 - (ii) *Reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film.*
 - (iii) *Reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed.*
 - (iv) *Making of any sound recording or visual recording for the private use of the person making such recording, or solely for the purposes of bona fide teaching or research.*
 - (v) *Making translation of a literary work.* (1 mark each)

Answer 4(a)(i)

Rule 5 of Foreign Exchange Management (Current Account Transaction) Rules, 2000 requires prior approval of the Reserve Bank for gift remittances exceeding US\$ 5,000 per remitter/donor per annum.

Answer 4(a)(ii)

Foreign Exchange Management (Investment in Firm, or Proprietary concern in India) Regulations, 2000 requires prior approval of Reserve Bank for investment by way of contribution to capital in firm engaged in software business.

Answer 4(a)(iii)

In terms of Foreign Exchange Management (Capital Account Transaction) Regulations, 2000 an Indian company can open a foreign currency account in India as well as outside India.

Answer 4(a)(iv)

Generally, a person resident outside India has been prohibited from establishing in India, without prior approval of the Reserve Bank, a branch or liaison office or any other place of business by whatever name called. However, a company incorporated outside India has been allowed to establish a manufacturing unit in Special Economic Zones in India, subject to condition that:

- such units are functioning in those sectors where 100% FDI is permitted;
- such units comply with part XI of the Companies Act, 1956 dealing with companies incorporated outside India (Section 592 to 602);
- such units function on a stand-alone basis;
- in the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an Authorised Dealer in Foreign Exchange.

In the light of the above legal position, a company incorporated in USA can establish its manufacturing unit in special economic zones in India.

Answer 4(a)(v)

Rule 7 Foreign Exchange Management (Current Account Transaction) Rule, 2000 provides that International Debit Cards can be used by a resident for drawing cash or making payment to a merchant establishment overseas during his visit abroad for permissible current account transactions and item wise limits as mentioned in the schedules shall be applicable to payment made through use of these cards.

Therefore, Dinesh can use his international debit card for withdrawal of cash during his visit abroad, subject to item wise prescribed limits.

Answer 4(b)

The Schedule to the National Environment Tribunal Act, 1995 lists out the following heads under which compensation for damages may be claimed:

- (a) Death;

- (b) Permanent, temporary, total or partial disability or other injury or sickness;
- (c) Loss of wages due to total or partial disability or permanent or temporary disability;
- (d) Medical expenses incurred for treatment of injuries or sickness;
- (e) Damage to private property;
- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
- (g) Expenses incurred by Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;
- (h) Loss to Government or local authority arising out of, or connected with, the activity causing any damage;
- (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
- (j) Claims on account of any harm, damage or destruction to the flora including aquatic flora, crops, vegetables, trees and orchards;
- (k) Claim including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-system;
- (l) Loss and destruction of any property other than private property;
- (m) Loss of business or employment or both;
- (n) Any other claim arising out of or connected with, any activity of handling of hazardous substance.

Answer 4(c)(i)

Making or publishing of a painting, drawing, engraving or photograph of a work of architecture does not constitute infringement of copyright under section 52 of the Copyright Act, 1957.

Answer 4(c)(ii)

Reproduction of a literary, dramatic, musical or artistic work in the form of a cinematographic film constitute infringement of copyright under Copyright Act, 1957.

Answer 4(c)(iii)

Reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed does not constitute infringement of copyright under section 52 of the Copyright Act, 1957.

Answer 4(c)(iv)

Making of any sound recording or visual recording for the private use of the person making such recording, or solely for the purpose of bona fide teaching or research does not constitute infringement of copyright under section 52 of the Copyright Act, 1957.

Answer 4(c)(v)

Making translation of a literary work constitute infringement of copyright under Copyright Act, 1957.

Question 5

- (a) *Raman purchased a car by taking a loan from a bank and gave post-dated cheques to the bank not only in respect of repayment of loan instalments but also towards premium of insurance policy for succeeding 3 years. On the expiry of the policy in the first year, the bank failed to get the policy renewed for the second year. In the meantime, the car met with an accident. Raman brought an action against the bank for 'deficiency in service' under the Consumer Protection Act, 1986. Will he succeed ?* (5 marks)
- (b) *What is the objective of 'know your customer' (KYC) guidelines ? When do the KYC guidelines apply ?* (5 marks)
- (c) *Mention the provisions of the Essential Commodities Act, 1955 regarding confiscation of essential commodities seized in contravention of section 3 of the Act.* (5 marks)

Answer 5(a)

Raman will not succeed. The facts of the case are similar to the case of *Pradeep Kumar Jain v. Citi Bank* [1999(g) SCALE 662]. The Supreme Court held that there is no deficiency in service because the obligation to renew the policy was on the appellant alone. But merely passing on two cheques to the bank for being paid to the insurance company the appellant would not absolve himself of his liability to renew the policy. The appellant also have certain duties to discharge in the matter of obtaining the policy and can not merely pass the blame to someone else.

Answer 5(b)

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. KYC procedures also enable banks to know/understand their customers and their financial dealings better which in turn help them manage their risks prudently. Banks are required to frame their KYC policies incorporating the following four key elements:

- Customer Acceptance Policy;
- Customer Identification Procedures;
- Monitoring of Transactions; and
- Risk management.

KYC guidelines applies at the following stages:

- Opening a new account.
- Opening a subsequent account where documents as per current KYC standards not been submitted while opening the initial account.
- Opening a Locker Facility where these documents are not available with the bank for all the Locker facility holders.

Answer 5(c)

Section 6A of Essential Commodities Act, 1955 provides that where any essential commodity is seized in pursuance of an order made under Section 3, a report of such seizure shall be made, without any unreasonable delay, to the collector of the district or the Presidency town in which such essential commodity is seized.

The Collector at his discretion, may direct for the production of the seized commodity before him and if he is satisfied that there has been contravention of the order he may pass order for confiscation of

- (a) the essential commodity so seized,
- (b) any package, covering or receptacle in which such essential commodity is found, and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section. Provided further that in the case of any animal, vehicle, vessel or other conveyance the owner of such animal, vehicle etc., shall be given an option to pay in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel, or other conveyance.

PART B

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) *'Concept of continuous service for the payment of gratuity' under the Payment of Gratuity Act, 1972.*
- (ii) *'Manner of fixation and revision of minimum wages' under the Minimum Wages Act, 1948.*
- (iii) *'Authorities for the investigation and settlement of industrial disputes' under the Industrial Disputes Act, 1947.*
- (iv) *'Hazardous process' under the Factories Act, 1948.*
- (v) *'Benefits to which insured persons are entitled' under the Employees' State Insurance Act, 1948.*
- (vi) *'Payment of subsistence allowance' under the Industrial Employment (Standing Orders) Act, 1946.*

(5 marks each)

Answer 6(i)**Concept of continuous service**

Section 2(c) of the Payment of Gratuity Act, 1972 defining continuous service says "continuous service" means continuous service as defined under section 2A.

According to Section 2A, of the Payment of Gratuity Act, 1972

- (1) An employee shall be said to be in continuous service for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of
 - (a) sickness,
 - (b) accident,
 - (c) leave,
 - (d) absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment),
 - (e) layoff,
 - (f) strike or
 - (g) a lock-out or
 - (h) cessation of work not due to any fault of the employee. It makes no difference whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;
- (2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service for any period of one year or six months, he shall be deemed to be in continuous service under the employer:
 - (a) for the said period of 1 year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than:
 - (i) 190 days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
 - (ii) 240 days in any other case;
 - (b) for determining the continuous service for the said period of six months for the payment of gratuity, the number of days the employee should have actually worked should be half the number of days actually worked which constitute continuous service for a period of 1 year, i.e., 95 days and 120 days respectively.

For the above purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which:

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946; or under the Industrial Disputes Act, 1947; or under any other law applicable to the establishment;
- (ii) he has been on leave with full wages, earned in the previous year;

- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
 - (iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.
- (3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of 1 year or 6 months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75 per cent, of the number of days on which the establishment was in operation during such period.

Answer 6(ii)

Manner of fixation and revision of minimum wages

Section 3 of the Minimum Wages Act, 1948 dealing with fixing of minimum wages provides the manner of fixation and revision of minimum wages.

According to Section 3(2), the 'appropriate Government' may fix minimum rate of wages for:

- (a) time work, (referred to as "a minimum time rate");
- (b) piece work, (referred to as "a minimum piece rate");
- (c) a "guaranteed time rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and
- (d) a "over time rate" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) of the Act provides that in fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for –

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employments;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities.

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other large wage-periods as may be prescribed;

Where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day as the case may be, may be indicated.

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1936 vide Section 4 thereof; minimum wages shall be fixed in accordance therewith.

Answer 6(iii)

Authorities for Investigation and settlement of industrial disputes

The Industrial Disputes Act, 1947 provides for following Authorities for Investigation and settlement of industrial disputes:

- (i) Works Committee.
 - (ii) Conciliation Officers.
 - (iii) Boards of Conciliation.
 - (iv) Court of Inquiry.
 - (v) Labour Tribunals.
 - (vi) Industrial Tribunals.
 - (vii) National Tribunals
- (i) *Works Committee* : The appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee in industrial establishments, where 100 or more workmen are employed or have been employed on any working day in the preceding 12 months. The Works Committee will be comprised of the representatives of employers and workmen engaged in the establishment. It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.
 - (ii) *Conciliation Officers* : The Act provides for appointment of 'Conciliation Officers', by appropriate Government, charged with the duty of mediating in and promoting the settlement of industrial disputes. The conciliation officer may be appointed for a specified area, or for specified industries in a specified area, or for one or more specified industries, either permanently or for a limited period. It is the duty of these officers to bring both the employees and employers together and help them to resolve their differences. If the dispute is settled, the conciliation officer shall send a report, to that effect, to the appropriate Government.
 - (iii) *Boards of Conciliation* : For promoting the settlement of an industrial dispute, the appropriate Government may, as occasion arises, constitute a Board of Conciliation which shall consist of a Chairman and two or four other members as the appropriate Government thinks fit. The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute. Where a dispute has been referred to a

Board, it shall, without delay, investigate the dispute and do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

- (iv) *Courts of Inquiry* : The appropriate Government may, as occasion arises, also constitute a 'Court of Inquiry' to inquire into any matter appearing to be connected with or relevant to an industrial dispute. It shall, thereafter, report about it to the Government ordinarily within a period of six months from the commencement of its inquiry. Such a court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where it consists of two or more members, one of them shall be appointed as the Chairman.
- (v) *Labour Courts* : The appropriate Government may constitute one or more 'Labour Courts' to adjudicate industrial disputes relating to any matter specified in the second schedule like issues related to standing orders, discharge or dismissal of workers, illegality or otherwise of strikes and lockouts, withdrawal of any customary benefit, etc. and to perform such other functions as may be assigned to them under the Act. A labour court shall consist of one person only to be appointed by the appropriate Government.
- (vi) *Tribunals* : The appropriate Government may constitute one or more 'Industrial Tribunals' to adjudicate industrial disputes relating to any matter, whether specified in the second schedule or third schedule, and to perform such other functions as may be assigned to them under the Act. The third schedule covers the matters such as wages, bonus, allowances and certain other benefits, certain working conditions, discipline, rationalisation, retrenchment and closure of establishment. A tribunal shall consist of one person only to be appointed by the appropriate Government. The duties of Industrial Tribunal are identical with the duties of Labour Court, i.e., on a reference of any industrial dispute, the Tribunal shall hold its proceedings expeditiously and submit its award to the appropriate Government.
- (vii) *National Tribunals* : The Central Government may, by notification in the Official Gazette, constitute one or more 'National Industrial Tribunals' to adjudicate an industrial dispute which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. Such a tribunal shall consist of one person only to be appointed by the Central Government. When a matter has been referred to a National Tribunal, it must adjudicate the dispute expeditiously and submit its award to the Central Government.

Answer 6(iv)

Hazardous Process

Hazardous process has been defined under Section 2(cb) of the Factories Act, 1948 as follows:

“Hazardous process” means any process or activity in relation to an industry specified

in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of the general environment;

The State Government may, by notification in the Official Gazette amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

Answer 6(v)

Benefits under E.S.I. Act, 1948

The E.S.I. Act, 1948 under Section 46 provides for 6 types of benefits to which the insured persons, their dependants are entitled. These benefits are as follows:

- (a) periodical payments in case of sickness certified by medical practitioner; (Sickness benefit)
- (b) periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement; (Maternity benefit)
- (c) periodical payment to an insured person suffering from disablement as a result of employment injury; (Disablement benefit)
- (d) periodical payment to dependants of insured person; (Dependants' benefit)
- (e) medical treatment and attendance on insured person; (Medical benefit)
- (f) payment of funeral expenses on the death of insured person at the prescribed rate of Rs. 1,500/-. (Funeral expenses)

All these benefits except the medical benefit are monetary benefits. The rules regarding these benefits are contained in Sections 46 to 58 and Rules 55 to 58. Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment. An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

Answer 6(vi)

Payment of Subsistence Allowance

Statutory provision for payment of subsistence allowance has been made under Section 10A of the Industrial Employment (Standing Orders) Act, 1946. As per Section 10A of the Act, on suspension, a workman is entitled to subsistence allowance @ 50 per cent of his last drawn wages prior to suspension for the first 90 days of suspension and @ 75 % of such wages for the remaining period of suspension if the delay in completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

If any dispute arises regarding the subsistence allowance payable to a workman,

the workman or the employer concerned may refer the dispute to the Labour Court constituted under the Industrial Disputes Act, 1947.

Question 7

(a) Distinguish between any two of the following :

- (i) 'Partial forfeiture of gratuity' and 'total forfeiture of gratuity' under the Payment of Gratuity Act, 1972.
- (ii) 'Model standing orders' and 'certified standing orders' under the Industrial Employment (Standing Orders) Act, 1946.
- (iii) 'Arising out of employment' and 'arising in the course of employment' under the Workmen's Compensation Act, 1923. (5 marks each)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Bonus must be paid to employees within a period of _____ months from the close of the accounting year.
- (ii) _____ means termination of the services of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.
- (iii) A minimum of _____ contributory service is required for entitlement to pension under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (iv) The employer is not liable for compensation when injury to the workman does not result in disablement for a period exceeding _____ days.
- (v) The employer is required to send a report to the Commissioner for workmen's compensation within _____ days of the death or serious injury of the workman. (1 mark each)

(c) Choose the most appropriate answer from the given options in respect of the following :

- (i) The 'occupier' of a factory is required to appoint a Welfare Officer where —
 - (a) 250 workers are employed
 - (b) 100 workers are employed
 - (c) 200 workers are employed
 - (d) 500 or more workers are employed.
- (ii) Out of the following which is not a manufacturing process —
 - (a) Finished goods and packing thereof
 - (b) The making of bidis
 - (c) Stitching old gunny bags and making them fit for use
 - (d) Pumping of water from a tubewell.
- (iii) From the date on which the Industrial Employment (Standing Orders) Act, 1946 becomes applicable to an industrial establishment, an employer is required to submit to the Certifying Officer the draft standing orders —
 - (a) Within 3 months

- (b) *Within 6 months*
- (c) *Within a month*
- (d) *Immediately on receipt.*
- (iv) *The Contract Labour (Regulation and Abolition) Act, 1970 applies to every establishment wherein workmen employed on any day of the preceding 12 months are —*
 - (a) *100 or more*
 - (b) *50 or more*
 - (c) *20 or more*
 - (d) *200 or more.*
- (v) *The maximum amount of gratuity payable under the Payment of Gratuity Act, 1972 is —*
 - (a) *Rs. 5,00,000*
 - (b) *Rs. 3,50,000*
 - (c) *Rs. 2,50,000*
 - (d) *Rs. 2,00,000.*

(1 mark each)

Answer 7(a)(i)**Partial forfeiture of gratuity & total forfeiture of gratuity**

Section 4(6)(a) of the Payment of Gratuity Act, 1972 provides that the gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. The right of forfeiture is limited to the extent of damage or loss caused.

Section 4(6)(b) deals with a case where the services of an employee have been terminated:

- (a) for riotous and disorderly conduct or any other act of violence on his part, or
- (b) for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases, the gratuity payable to the employee may be wholly or partially forfeited.

It has been held in the case of *Bharat Gold Mines Ltd. v. Regional Labour Commissioner (Central)*, (1987) 70 FJR 11 (Karn) that when an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of section 4(6) of the Act.

Answer 7(a)(ii)**Model standing orders and certified standing orders**

Standing Orders as per section 2(g) of the Industrial Employment (Standing Orders) Act, 1946 means rules relating to matters set out in the Schedule to the Act.

Within 6 months from the date on which the Act becomes applicable to an industrial

establishment, the employer is required to frame draft 'standing orders' and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules. The Certifying Officer after following the procedure laid down for certification of standing orders under the Act will certify the standing orders.

The matters prescribed in the Schedule to the Act are called Model Standing Orders. Section 12-A provides that for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under this Act come into operation in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment.

Answer 7(a)(iii)

Arising out of employment and in the course of employment

To make the employer liable for compensation it is necessary that the injury is caused by an accident which must be raised out of and in the course of employment.

Arising out of employment : The expression "arising out of employment" suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause.

In the case of *Mackenzie v. I.M. Issak*, it was observed that the words "arising out of employment" means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.

Arising in the course of employment : The expression "in the course of employment" suggests the period of employment and the place of work. In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

Answer 7(b)

- (i) Bonus must be paid to employees within a period of **8 months** from the close of the accounting year.
- (ii) **Retrenchment** means termination of the services of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.
- (iii) A minimum of **10 years** contributory service is required for entitlement to pension under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (iv) The employer is not liable for compensation when injury to the workman does not result in disablement for a period exceeding **3 days**.
- (v) The employer is required to send a report to the Commissioner for workmen's compensation within **7 days** of the death or serious injury of the workman.

Answer 7(c)(i)

- (d) 500 or more workers are employed

Answer 7(c)(ii)

- (a) Finished goods and packing thereof

Answer 7(c)(iii)

- (b) Within 6 months

Answer 7(c)(iv)

- (c) 20 or more

Answer 7(c)(v)

- (b) 3,50,000

Question 8

Attempt any five of the following stating relevant legal provisions and decided case law, if any :

- (i) Mohan was in occupation of a residential quarters allotted to him by his employer. On his retirement on superannuation, he failed to vacate the quarters. His employer withheld the gratuity payable to him insisting that he should vacate the quarters first. Mohan approached the controlling authority claiming gratuity. Will he succeed ?*
- (ii) Raju has been employed by Fancy Bazar as a part-time sweeper to clean the floors twice during the day. The provident fund inspector visited the establishment and raised objections for non-inclusion of his name in the muster roll and not paying provident fund contributions. Is the view held by the inspector valid ?*
- (iii) Designers Ltd. is engaged in fabrication work of window grills with the aid of power and has employed 19 workers. Recently, it appointed 2 gardeners for gardening in its factory premises. Is the company liable to extend the benefits to the gardeners as applicable to other factory workers ?*
- (iv) The workmen went on sympathetic strike by absenting themselves from work in support of the workmen belonging to some other employer. The management intends to take disciplinary action against those workmen. Is the intention of the management justified and legal ?*
- (v) Efficiency Ltd. is in the process of reorganising its business. It is likely to result in some labour being rendered surplus. It has proposed retrenchment of economic dead weight. Can the company do so ?*
- (vi) Jugal, a railways employee was ordered to travel to certain station and repair a pipeline there. After finishing the work, Jugal was hurrying across the platform when he slipped and fell and died as a result of the fall. Is the employer liable to pay compensation under the Workmen's Compensation Act, 1923 ?*
- (vii) An employee was dismissed from service for an act of misconduct. The company*

did not pay any bonus to the dismissed employee for the accounting year in which the dismissal took place. Is the action of the company justified ?

(4 marks each)

Answer 8(i)

Mohan will succeed. Withholding of gratuity is not permissible under any circumstance other than those enumerated in Section 4(6) of the Payment of Gratuity Act, 1972. Section 4(6) of the Payment of Gratuity Act says:

- (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer' shall be forfeited to the extent of damage or loss so caused;
- (b) the gratuity payable to an employee may be wholly or partially forfeited-
 - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
 - (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Gratuity cannot be withheld for non vacation of service quarters by relieving employees. (*Air India v. Authority under the Act*, 1999 CLA 34 Bom.66)

Answer 8(ii)

The view held by the Inspector is valid. It has been held that the definition of "employee", in Section 2(f) of the Employees' Provident Funds Act includes a part-time employee, who is engaged for any work in the establishment, a sweeper working twice or thrice in a week, a night watchman keeping watch on the shops in the locality, a gardener working for ten days in a month, etc. (*Railway Employees Co-operative Banking Society Ltd. v. Union of India*, 1980 Lab. IC 1212).

Answer 8(iii)

In *Union of India v. G.M. Kokil*, 1984 SCC (L&S) 631 it has been held that all persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Factories Act, 1948.

Hence the gardeners appointed for gardening in its factory premises are entitled to the benefits as applicable to other factory workers.

Answer 8(iv)

A sympathetic strike is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen. However, in *Ramalingam v. Indian Metallurgical Corporation*, Madras, 1964-I L.L.J. 81, it was held that such cessation of work will not amount to a strike since there is no intention to use the strike against the management.

Answer 8(v)

In *Parry & Co. Ltd. v. P.C. Pal* (1970) II LLJ 429 the Supreme Court has observed that the management has a right to determine the volume of its labour force consistent

with its business or anticipated business and its organisation. If for instance, a scheme of reorganisation of the business of the employer results in surplusage of employees, no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however, unfortunate it be. The fact that the implementation of a reorganisation scheme adopted by an employer for reasons of economy and convenience would lead to the discharge of some of the employees, will have no material bearing on the question as to whether the reorganisation has been adopted by the employer bona fide or not.

In the light of the above observations of the Supreme Court, the company can do so.

Answer 8(vi)

The employer is liable to pay compensation to the workman. Under the Workmen's Compensation Act, 1923 an employer is liable to pay compensation only if the injury is caused to a workman by an accident arising out of and in the course of his employment.

The facts of the given problem are almost similar to the case namely *Works Manager, Carriage & Wagon Shop v. Mahabir*, (1954-55) F.J.R. 354 where a railway employee was ordered to travel to a certain station to repair a water main. When he had finished the work and was crossing the platform to catch the train, he slipped and died as a result. It was held that the death arose out of and in the course of employment and the employer is liable to pay compensation to the workmen.

Answer 8(vii)

The action of the company is justified. In *Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court*, (1996) 2 LLJ 606, it has been held that if an employee is dismissed from service for any act of misconduct enumerated in Section 9 of the Payment of Bonus Act he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place.
