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Contract Labour: Position In India **Before Code Of Wages,2020.**

Authored By-Dhairya

Contract Labour is one of the acute form of unorganized labour. Under the system of contract labour workers may be employed through contractor on the contract basis. Workmen shall be deemed to be employed as “contract labour” or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. In this class of labour the contractors hire men (contract labour) who do the work on the premises of the employer, known as the principal employer but are not deemed to be the employees of the principal employer.

The contract worker is a daily wager or the daily wages are accumulated and given at the end of the month. The industries justify contract labour on the grounds that the requirement is temporary or seasonal. Nonetheless, there are ready instances of contract labour being deployed for tasks as security, sweeping and cleaning, though it is difficult to comprehend how these tasks are temporary and do not justify full time regular employees.

Contract Labour In India

The system of employing contract labour is prevalent in most industries in different occupations including skilled and semi-skilled jobs. It is also prevalent in agricultural and allied operations and to some extent in the services sector. A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a contractor. Contract workmen are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn, is compensated by the establishment. Contract labour has to be employed for work which is specific and for definite duration. Inferior labour status, casual nature of employment, lack of job security and poor economic conditions are the major characteristics of contract labour. While economic factors like cost effectiveness may justify system of contract labour, considerations of social

justice call for its abolition or regulation. The condition of contract labour in India was studied by various Commissions, Committees, and also Labour Bureau, Ministry of Labour, before independence and after independence. All these have found their condition to be appalling and exploitative in nature. The Supreme Court of India in the case of Standard Vacuum Refinery Company Vs. their workmen¹ observed that contract labour should not be employed where: —

- (a) The work is perennial and must go on from day to day;
- (b) The work is incidental to and necessary for the work of the factory;
- (c) The work is sufficient to employ considerable number of whole time workmen; and
- (d) The work is being done in most concerns through regular workmen.

Status Of Contract Labourers

The practice of employing labour through contractors and other agencies, thus, avoiding the direct nexus between the employers and their workmen, was very common. Thus, entire factories were farmed out to contractors requiring them to produce the goods in such factories through machinery owned by the employers, and thereafter, the goods were marked under the employer's brand name. This ensured that the workmen were paid much lower wages than they would be entitled to under direct employment. This system led to whole-scale exploitation of labour, and a series of demands were made before tribunals for the abolition of contract labour system. The tribunals entertained the claims, and in many cases, granted the demands through their awards. In case of Standard Vacuum Refining Co. of India Ltd. v. Workmen, a leading case on the subject, the Supreme Court upheld the right of workmen to seek abolition of contract labour on behalf of the contractors' workmen, and enumerated some of the circumstances in which such abolition can be directed. There was considerable agitation by the workmen and their unions for the abolition of contract labour, especially in certain cases where it was absolutely necessary to regulate the terms and conditions of service under which such labour could be employed.

¹ Standard Vacuum Refinery Company Vs. their workmen 1960 AIR 948

Thus the Contract Labour (Regulation & Abolition) Act 1970, was passed by the Parliament and came into force on September 1970.

The Contract Labour (Regulation & Abolition) Act 1970:- In India, contract labourers are protected by the Contract Labour Regulation and Abolition Act, 1970. A contract labourer is defined in the Act as one who is hired in connection with the work of an establishment by a principal employer through a contractor. While a contractor is the supplier of contract labour for the organization, a principal employer is the person responsible for the control of the establishment. This act applies to any establishment in which 20 or more workmen are employed on a contract basis on any day of the last one year and also to all contractors who employ or have employed 20 or more workmen on any day of the preceding twelve months. Every principal employer to whom this act applies should register his establishment in the prescribed manner for employing contract labour. Unlike the industry sector, generally, there is no provision for remaining unregistered. If the Government at any point of time is dissatisfied with the practices followed, it can revoke the registration of an establishment.

Contract workers need to be paid as per the minimum wage act. For the health and welfare of contract labourers certain provisions have been made mandatory by the Contract Labour Act such as safe drinking water, canteen facilities, first aid facilities etc. Social security covers in terms of provident fund benefits and medical facilities need to be also given to the contract employees.

It is the primary responsibility of the contractors to provide all facilities to the workers as delineated in the Act. However, the principal employer should ensure the presence of his authorized representative at the place and time of disbursement of wages by the contractor to the workmen and it is the duty of the contractor to ensure the disbursement of wages in his/her presence. However, if the contractor fails to pay wages or provide other facilities, the responsibility falls on the principal employer. Field officers of labour department are supposed to conduct regular inspections to detect violations of the provisions of the Act.

Apart from the regulatory measures provided under the Act for the benefit of the contract labour, a government can prohibit employment of contract labour in any establishment in any process operation or other work. Such restrictions are often decided on the basis of whether the work is perennial in nature or the work is incidental for an establishment. In such cases it is also examined whether the work is being done ordinarily through regular workmen in that establishment or a similar establishment. Though the Act lays rules as to how the contractual employment should be maintained and there are government officials for inspection to detect violations of the norms, because of the presence of two separate management systems, viz., the contractor and the principal employer, employer-employee relationship often becomes blurred. Consequently, contract labour often does not get its due and this has given rise to a number of litigations. One of the important sources of controversy is whether contract labour can be used in the core activities of an establishment together with the regular employees. A set of perennial or core activities is defined in terms of what a company had declared as its main activities at the time of registration under the Factories Act of 1948. Several litigations arose because of the use of contract labour in the so called “core activity” and number notifications were issued prohibiting the companies to employ contract labour for some specified work. At present, an establishment is not prohibited, in general, to employ contract labour for the core activities. A state government, however, can amend this provision of the act.

Constitutional Validity Of Contract Labour

The benefits conferred by the Act and the rules are in their nature, social welfare legislative measures. There is a rational relation between the impugned Act and the objects to be achieved, and the provisions are not in excess of those objects. There is no violation of Article 14². The application of the Act does not amount to an unreasonable restriction on the rights under Art 19(1)(g)³. Moreover, the Contract Labour (Regulation & Abolition) Act 1970⁴ is not a complete code on contract labour. The Act serves two purposes that is-1) regulations of conditions of service of workers employed by the contractor who is engaged by a principal employer; and 2) the appropriate government abolishing contract labour altogether in certain Central Government or by any appropriate government, provide that upon the abolition of contract labour, the said labour would be directly absorbed by the principal

² Constitution of India

³ Constitution of India

⁴ Contract Labour (Regulation & Abolition) Act 1970

employer.

Regulation Of Contract Labour

For regulation of contract labour an appropriate government by an order notified in the Official Gazette may appoint persons being Gazetted officers of Government, as it thinks fit to be licensing officers for the purposes of this Act that is for the purpose of the regulation of contract labour. The appropriate government also defines limit, within which a licensing officer shall exercise the powers conferred on licensing officers by or under the Act. Further with effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work though contract labour except under and in accordance with a license issued in that behalf by the licensing officer. The license given to the contractors includes in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35⁵ and shall be issued on payment of such fees and on deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed. Section 16-21⁶ deals with Welfare and Health of Contract Labour. The appropriate Government where in the contract labour is numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour. Without prejudice to the generality, such rules also apply as to the foodstuffs which may be served there in and the charges which may be made therefore, the number of canteens that shall be provided, accommodation, other equipment of the canteens etc. In *Gammon India Ltd v. Union of India*⁷, it was held that the requirement of providing canteens even in road construction work is not unreasonable, and there is no constitutional infirmity involved.

In ever place wherein contract labour is required to halt at night in connection with the work of an establishment to which this Act applies and in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of contract labour such number of rest-

⁵ Ibid

⁶ Ibid

⁷ *Gammon India Ltd v. Union of India* 1947 AIR 960

rooms or such other suitable alternative accommodation within such time as may be prescribed. The rest-rooms shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition. It will be unreasonable to require a labourer to halt at night at place of work without the provision of a rest room where the provision is not constitutionally invalid.

Section 18 of the Act speaks of facilities like supply of drinking water, conveniences of latrines urinals and washing facilities. First-aid facilities shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

If any amenities mentioned in Section 16, 17, 18 and 19⁸ for the benefit of contract labour employed in an establishment is not provided by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed. All the expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be specified. Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and at shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

⁸ Ibid

The appropriate government must tighten up its enforcement machinery and ensure that thorough and careful inspections are carried out by fairly senior officers at short intervals, with a view to investigating as to whether the labour laws are being properly observed. It is the duty of the contractor to ensure that disbursement of wages is made in the presence of the authorized representative of the principal employer.

The governments' failure to perform its obligation amounts to a violation of Article 21⁹, and the workers can enforce their right by a writ petition under Article 32¹⁰.

Section 21¹¹ has nothing to do with the wage rates. The object and purpose of the said section is to ensure that wages payable in law by a contractor to his workmen are paid. If the contractor fails to pay his wages legally payable by him, then under this section, the principal employer is under an obligation to pay the wages and get them reimbursed from the contractor.

Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend

⁹ Constitution of India

¹⁰ Constitution of India

¹¹ Ibid

to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention. The reference to the labour court or the industrial tribunal could be as to whether it is necessary for the management to employ contract labour directly or indirectly; to ascertain whether the employment of contract labour is bona fide or was a camouflage. Merely because the contractor or employer has violated any provisions of the Act or rules, the court cannot issue a mandamus for deeming the contract labour as having become the employees of the principal employer. It is not the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not; which is a matter fit for the decision of the government.

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees.

If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent it.

Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished.