

Contract Labour Management

Contract labour is a significant and growing form of employment. It exists in almost every sphere of the employment, industries, allied operations and also prevalent in the service sector. It generally refers to workers engaged by a contractor for other organisation. The exploitation of contract labour in employment is one the biggest concern of the government as the contract labour have little bargaining power, social security and often engaged in the hazardous industries with lesser facilities and security. To regulate this system the government enacted the Contract Labour (Regulation & Prohibition) Act, 1970 to secure the status of contract labourers and to abolish them from certain establishment and it came into force on 10-2-1971.

Before we go any further, let's take a quick flashback to history of Contract Labour Management —Contract Labour Act came into existence in 1970. This was a development to the ongoing emergency, the subsequent price rise, recession and it's direct effect on the working class. To not lose out to the situation, the government brought ID Act—Chapter V-B, which prohibited any layoff or retrenchment. In this scenario, employer avoided employing permanent work force and substituted it with temporary labour on contractual basis.

Based on the recommendation by second five year plan, planning commission recommended to the Parliament of India to have regulation for contract labour.

The contract Labour (regulation and abolition) Act 1970 seeks to protect the interest of workers employed on contract. On one hand, it seeks to provide contract workers minimum wages through licensing of contractors and by holding principal employers accountable for enforcement of the law, however, on the other hand, it empowers state and central governments to prohibit the conduct of certain kinds of work through contract labour. The concerned government can issue a notification in the official gazette to prohibit employment of contract labour in any process, operation or other work. the central government has abolished contract labour practices in a number of jobs in different industries and has issued 36 notifications so far in this regard.

Most of the litigation pertaining to contract labour today is related to regularisation claims. That is, the contractor's workers claiming regularisation with the principal employer. To succeed in such claims , apart from other precautions, it is advisable to have proper contract labour system in the company. There should be proper agreement, and it should be ensured that the contractor has given appointment letter to his workers. Further, it should be ensured that the contractor is paying minimum wages, PF, ESI to his workers. A clause can be inserted in the contracts that the contractor shall provide photocopy of monthly records to the principal employer of the compliances done.

Applicability

Contract labour act applicable only to organization where 20 or more workmen employed during the preceding 12 months. Contractor who employed 20 or more workmen during the preceding 12 months. In a case such as this, a clarification is needed since, if each contractor working in one establishment has 20 or less workmen individually, contractor need not to obtain licensee (other than Rajasthan where it is 40) but if total workmen in an organization increase over 20, principle employer need to register under contract labour act.

Nature of activity

The work performed in an establishment will be termed as intermittent if it is performed for less than 120 days in preceding 12 month and 60 days for seasonal industries. Along with intermittent activities, same provision also clarify few of the specific activities which known as ancillary activity such as canteen, gardening, security, loading unloading, transportation etc. This support appropriate authority a guidelines prior to issue notification as :

Such activities is incidental to or necessary for the relevant activities of such establishment.

It is of perennial nature

It is done ordinarily through regular employees of the organization

Now, in the act, nowhere the perennial term has been defined. Section 10(2) (b) says that if job exists for sufficient duration will be considered as perennial nature. Whereas act do not prohibits engagement of contract labour on any job or activity unless it is prohibited by Govt. under the act. Hence contract labour can be engaged on any permanent nature of job.

Parties under the Act

Basically there are three parties involved namely, Principal employer, Contractor and contract labour. To clarify, Principal employer as defined covers any person responsible for the supervision and control of the establishment which in case of factory would be owner or occupier or the manager of the factory.

Contractor, in relation to an establishment means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or article of manufacture to such establishment through contract labour or who supplies contract labour or any work of the establishment including sub- contractor.

Contract labour is a workmen who is employed in connection with the work of an establishment when he is hired or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

In the above definition, the most critical is of sub-contractor. Who is and how to handle sub-contractors. In fact word sub-contractor is not used anywhere in the act or rule other than the definition of contractor and hence it is more complicated.

The important to understand is in case sub-contractor is engaged by the contractor, there must be proper agreement between the contractor and sub-contractor and Form V should be issued by contractor to such sub- contractor and not by principal employer.

The question arise, if a contractor gives work to sub-contractor, therefore the contractor needs to register as principal employer? At times such contractor may not be entitled to register as principle employer.

Major Flaws in the Act

One key issue is who is responsible for the minimum wages, and statutory benefits such as Provident Fund, ESI of the contractor's workers etc. While the initial responsibility is of the contractor, the ultimate responsibility lies with the principal employer. Which means that if the same are not complied with, the principal employer shall be liable for the same, along with interest, damages, or even prosecution, in case of non-payments.

Same and Similar

Another issue faced by companies is in what processes can the contract labour be hired? Often, misconception is that the same cannot be hired in core activities of a company. The correct position in law is that unless there is a prohibition notification by the government to employ certain category of contractor's workers in certain processes, they can be hired for any kind of work. Only in case of a prohibition notification, there is a ban to employ contract labour in such processes and at such places for which the notification is there.

A question followed-up to this is: are the contractor's workers liable to get equal wages as that of the principal employer's? This has been answered by the Supreme Court in its various judgments. The sum and substance, and the latest position is that if there is equality in work done, working hours, quality, qualification, experience seniority of employees, selection process and criteria etc, then there should be equal pay.

Practically, however, all these are seldom found to be equal. Further, certain judgments of the Supreme Court have also laid down that a principal employer's responsibility is only to ensure payment of minimum wages; payment of equal wages is of the contractor. In fact, grant of licence to the contractor requires that the workers of the contractor should be given equal wages.

Claim Permanency

Most of us dealing with contract labour act always work under threat of contract labour claiming permanency. There are various opinion on the same and threat always there. The said Act empowers Govt to abolish certain activities carried out by contract labour by way of notification. It is not mandatory under the act to absorb workmen post such prohibition.

Outsourcing = Contact labour?

With globalization growing and multinational companies entered into the market, to create confusion very intelligently a word was coined Outsourcing. To understand in easy language, when a work is done through third party and when labour engaged by third party worked in the premises of the principle employer it is contact labour and when it is done outside it is outsourcing. But it's not true. The other way is, contact labour reflects manpower whereas outsourcing reflects the job or the activity. Hence when the contract is given for labour supply it is contact labour and when job contract is given it is outsourcing.

Court held both the cases are contract labour under act.

Quality & Quantity of CL

When an employer give contract to the contractor, often it is found either quality or quantity of the labour deployed are not appropriate. Employer start demanding particular number and skill and to the extend start selecting the contract labour. Once the job is assigned to the contractor by way of agreement, principle employer has no say in selection and number of contact labour. Principal employer can always ask under agreement, to contractor to deploy minimum number of workmen to ensure timely completion of work and quality of work.

Default on license and Payment

It is often found for any reason contractor dose not renew his license may be because of time or ignorance or anything else. And the common myth all round is in such case contract labour becomes liability of principal employer. Actually as per the provision, in case contractor has not renewed license, contractor will be prosecuted. There lies no liability on account of Principal employer.

Similarly, contractor getting defaulted frequently on the payment committeeman and the establishment need to a pay.

There are many such questions and clarity yet required to understand on contract labour act.