

HOW TO UNIONISE CONTRACT WORKERS - A SUPREME COURT JUDGMENT POSES AN OLD QUESTION TO INDIA'S LABOUR MOVEMENT

In a significant judgment, the Supreme Court ruled that contract workers should get the same pay as permanent workers. It held that denial of equal pay for equal work to daily wagers, temporary, casual and contractual employees amounted to “exploitative enslavement, emerging out of a domineering position”. The court also made the philosophical point that denial of the principle of equal pay for equal work is a violation of human dignity. Though the verdict came in the context of workers employed by the government, it strikes at the heart of the inequity that characterises the treatment of labour in both the public and private sector, whose defining characteristic is the division of workers into a two-tier caste system of regular and contract workers. In establishments across the country, an elite minority of permanent workers enjoy relative job security and higher wages, while the vast majority, comprising casual or contract workers, toil under terms where they can be terminated any time without reason, and get paid a fraction of what the regular workers get. No change - It would therefore be natural to hope that the SC verdict would have an immediate, and positive, bearing on contract workers' compensation. Unfortunately, this is unlikely to happen, due to the third difference between permanent and contract workers: access to collective bargaining.

As per the Trade Unions Act, 1926, any workman who works in a factory can join a union of that factory. But trade unions typically have only permanent workers as members. The reason cited is that contract workers are not employees of the employer in question (the manufacturing unit), and so should not find representation in a union body formed for the purpose of negotiating with the said employer. Contract workers are hired by the labour contractor, who is empanelled with the employer as a supplier of contract labour, and who pays their salaries. But not being on the rolls of an employer does not disqualify a contract worker from being a member of a factory's union. Labour law experts point to section 2 (g) of the Trade Union Act, which defines “workmen”, for the purposes of a trade union, as “all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises”.

This question of who can become a member of a trade union also came up recently in the case of Chander Bhan etc. Vs. Sunbeam Autoworkers Union in the Gurgaon District Court. In a judgment that went largely unnoticed, the court ruled that any workman employed by a factory — irrespective of whether he was a permanent worker or not, fulfilled the Industrial Dispute (ID) Act's definition of workman or not — was eligible to participate in union activities. In the Gurgaon industrial belt, Sunbeam Autoworkers Union is probably the only union that gives membership to workers with less than 240 days' service, and it needed a court intervention to be able to do so. But even it does not offer membership to contract workers. In fact, no union anywhere gives membership and voting rights to contract workers.

The reasons are many. First, in an industrial climate extremely hostile to any union activity, workers believe that forming a union that also includes contract workers is bound to provoke the management into even greater hostility. Second, managements refuse point blank to discuss with unionists any issues concerning contract workers. Third, contract workers are far more insecure compared to regular workers. In an era where companies frequently terminate even a permanent worker for engaging in union mobilisation, the stakes are too high for contract workers, who could be summarily dismissed, without any consequences, by the management. Fourth, and this is an unpalatable truth for most trade unionists, permanent workers themselves don't want to extend union membership to contract workers. In a factory, say, that employs 300 permanent workers and 1,200 contract workers, any union that gives voting rights to contract workers would instantly marginalise permanent workers. Given that permanent workers' salaries are much higher, economic self-interest militates against the inclusion of contract workers in union membership. As a result, India's contract workers, with the exception of some PSUs in select sectors such as steel and coal, remain both heavily exploited and largely un-unionised, with the lack of unionisation and exploitation reinforcing each other.

Ironically, it was the Contract Labour (Regulation & Abolition) Act, 1970, ostensibly enacted to abolish contract labour, that cemented their exploitation by offering a legal operating framework to labour contractors. Before this legislation, temporary workers and permanent workers could make claims on their employer and negotiate as members of the same union. But the CL Act, by introducing a distinction between an 'employer' and a 'principal employer', kept the door open for expansion of contractualisation.

Getting around the law - Contract labour was initially employed only for non-core work such as gardening, cleaning, and maintenance. Soon, they began to be increasingly employed in production as well. Workers protested. In response, the CL Act was enacted. It expressly prohibits the employment of contract labour for perennial work, that is, in core production. But labour contractors easily circumvent this requirement through what have come to be known as 'sham contracts'. It is a contract that may show a worker as having been hired for a cleaning job. But once he enters the factory premises, he is engaged in production work. There is no documentation to show that a contract worker, who on paper, is engaged for cleaning work, is actually in production.

The SC judgment thus poses an old question to India's labour movement: how to unionise contract workers, who are in one factory today, in another the next, and whose interests are all too easily played off against those of permanent workers? Unless the labour movement comes up with an answer to this question, legislations and judicial pronouncements may not change things much on the ground.

An unpalatable truth for most trade unionists is that permanent workers do not want to extend membership to contract workers.