PSUS & LABOUR LAWS WITH SPECIAL REFERENCE TO CONTRACT LABOUR IN MANUFACTURING INDUSTRY

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Before the industrial revolution and the introduction of mechanized manufacture, regulation of workplace relations was based on status, rather than contract or mediation through a system of trade unions. Serfdom was the prevailing status of the people, except where artisans in towns could gain a measure of self-regulation through guilds. With economic development, there came about a growing recognition that greater protection was needed to promote the health and safety of workers, while also preventing of unfair practices in employment of labour.

After the industrial revolution, the need was felt for laws to regulate, regularize and streamline employment conditions, service benefits, welfare measures and a social security system for the vast working class. Several laws were enacted over the years to deal with various aspects of work and welfare of the employees/workmen and a set of conditions for service and connected matters was laid down to be followed strictly by the employer. It was also made mandatory on the part of the employer not only to give workers a fair wage but also to provide good working conditions and to secure the workers future through social security measures.

Over a period of time, legislation covering regulation of employment, amenities to be provided by the employer at the place of work, fair wage and regulation of service conditions were enacted for the vast majority of workmen. Special facilities for women workers and other social security measures like provident fund, ESI, gratuity and compulsory paid holidays were also implemented.

For administration of the aforesaid provisions, elaborate arrangements were made by the government by setting up various commissions to guide and control the employers in their respective fields.

Broadly the following enactments come to our mind when we consider labour laws in the field of manufacturing:

1. Factory Act
2. Industrial Dispute Act
3. Employees' Provident Funds and Miscellaneous Provisions Act
4. Employees' State Insurance Act
5. Payment of Wages Act
6. Minimum Wages Act
7. Payment of Bonus Act
8. Payment of Gratuity Act
9. Contract Labour (Regulation and Abolition) Act
10. Workmen's Compensation Act
11. Maternity Benefit Act
12. Trade Unions Act
13. Mines Act
14. Standing Order Act
15. Equal Remuneration Act
16. Shops and Commercial Establishment Act etc.

For smooth implementation of the aforesaid specific laws, government departments were organized and officers were provided with powers to regulate the functions of employers and ensure that the provisions conferring amenities / facilities were strictly complied with.

For dispute resolution, whether between the employer and employee, employer and employer or workman and workman, provisions were made in the shape of the Industrial Dispute Act to deal with trade unions, discipline, strike and gherao,

service benefits and employment conditions. Authorities were created under the Industrial Dispute Act conferring powers to deal with particular matters. Such authorities as Assistant Labour Commissioner, Deputy Labour Commissioner, Regional Labour Commissioner, District Labour Officers and Labour Enforcement Officers were to facilitate adjudication of disputes. Further, Courts and Tribunals were constituted with the name and style of Labour Courts, Industrial Tribunals etc.

Over a period of time and as a function of the rapid industrialization of India, not only industry's various sectors grew in multiple proportions but also labour enforcement mechanisms at an equal pace.

However, there were some gaps in regard to the regulation of service conditions of the vast majority of workmen from the unorganized sector such as contract labour. The noticeable feature that stands out today is that the vast majority of the labour force in the unorganized sector are still a deprived lot in various areas. The situation is prevalent in almost all industries, in agriculture and allied operations and in the service sector. The category generally refers to workers engaged through an intermediary and is based on a triangular relationship between the user enterprises, the contractor (including the sub contractor) and the workers. These workers have very little bargaining power or are often engaged in hazardous occupations endangering their health and safety. They are often denied minimum wages and have little or no security of employment. On the other hand, reasons the like sporadic nature of the work, difficulty in ensuring closer supervision by the employer or cost effectiveness, flexibility in manpower deployment, concentration in core competencies etc., justify the system of contract labour that is resorted to by industry. The Contract Labour Regulation Act being a comprehensive act dealing with the subject, it is now necessary to see whether it has fulfilled the objective for which the laws are made. With the growth of the economy over a period of time and the advent of globalization/ liberalization, the labour laws have been found to be not in tune with the economic progress.

The Contract Labour Regulation & Abolition Act 1970 was formulated to regulate the service conditions of the vast majority of labour force in the unorganized sector. The concept of amelioration of contract labour and its abolition is more a distant dream for which the legislators had thought it prudent to regulate the service

conditions of such labour first so that the labour force are not deprived of their basic amenities and social security. The objective of the Act, therefore, is rather to regulate the service conditions and upon prevalence of certain circumstances to seek the abolition of contract labour to prevent exploitation of labour at the hands of unscrupulous employers. By regulating the service conditions, the Act addresses basic issues like employment, wages, a good working atmosphere, basic necessities like wash room, urinal, latrines, canteen, place to rest etc.

While having provisions for basic facilities at the place of work, the Act also ensures a standard wage, keeping in view the basic human needs, compulsory paid holidays, restrictions of overtime, health and hygiene and particularly requirements for women workers.

As the scheme of the Contract Labour Act stands, it is clear that the Act is more geared to the regulation of employment of contract labour and their working conditions. And in certain exceptional conditions it seeks the abolition of the contract labour system after following the procedure as laid down in Section 10 of the Act. The act does not provide for absorption or regularization of contract labour after its abolition but it does keep in its investigatory fold the determination whether the job in which the abolition of contract labour system is sought requires full time engagement of workers regularly on a perennial basis. While deciding the issue, engagement of workers in similar industry is also to be examined.

The courts have been taking the view that contract labour should be absorbed if the intermediary contractor is proved to be only a name lender and the contract is sham and bogus. A judgment in the Air India case delivered by the Hon'ble Supreme Court (three judges' bench) in 1996 disturbed the matrix. It held that on issuance of a notification prohibiting the employment of contract labour on any job the contractor vanishes from the scene and all such contract labourers will be deemed to be employees of the establishment of the principal employer from the date of such notification. Thus there is automatic absorption of the contract labour. It went on to hold that if the appropriate government agency issues a notification prohibiting employment of contract labourers, it cannot review, modify, or alter such notification. It was further held that for the companies wherein the government owns more than

51% shares (i.e. Government Companies under Sec.617 of the Companies Act, 1956) these will be deemed to be operating under control/ authority of the government, which holds such share capital. Accordingly such government will be the appropriate authority.

owever, this judgment was overruled by the Hon'ble Supreme Court (Constitution Bench comprising of five judges) in its judgment delivered on 30th August 2001 in a case involving SAIL. Following issues, among others, were taken up by the Hon'ble Constitution Bench while deciding the SAIL case:

Whether there is automatic absorption of contract labour following on issuance of notification.

The Hon'ble Bench in its judgment (SAIL vs. National Waterfront Workers Union), while reversing the Air India Judgment quashed the 1976 notification issued by the central government and held that on abolition there would be no automatic absorption.

The essential consequence of the prohibitory notification is that those jobs henceforth cannot be carried out by contract labour any more. In case the principal employer wants to carry out those jobs by engaging regular employees he may give preference to these erstwhile contract labourers. The contract labour cannot claim absorption in the principal employer's establishment as a matter of right as there is no such provision in the contract labour act.

The impact of the SAIL judgment is very much significant in respect of jobs outsourced by industries. At the outset, the threat of automatic absorption was removed, and at the same time the principal employers were allowed to continue with the Contract Labour Sysytem to the extent feasible. However, it is important to keep in mind the two riders such as that the contract should not look like a sham or a camouflage and secondly, that the contract labour deployment should be avoided where the principal employer has a statutory obligation, such as running a canteen in the factory.

Analyzing the aforesaid discussion, we can conclude safely that the deployment of contract labour is a necessity for the industry and the principal employers' obligation to open avenues for employment in the organized sector is addressed. Further, the principal employer as a benevolent employer should ensure a proper work environment and a decent wage for the contract labour by conforming at least to the minimum wages prescribed by the government.

SAIL is a model employer in this respect, who ensures payment of wages not only in time but also a higher wage than those prescribed by the government besides ensuring other service benefits.

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