Absorption of Contract Workers

For any employee/worker joining any service on daily basis, as temporary one or on ad hoc basis, it is but natural that he would prefer being absorbed in regular service in the said establishment, factory or office. It is more so in the case of contract workers or those who are employed for long period on contract basis. With the passage of time and intensive industrialisation, the issue of absorption of contract workers has assumed great significance. As a matter of fact contract labour remained ignored for a pretty long time. Neither the contractors nor the principal employers cared for the contract labour. Therefore the Parliament passed Contract Labour (Regulation and Abolition) Act, 1970, to prevent exploitation of contract labour. Basic policy underlying this Act, is to prohibit the employment of contract labour and wherever this is not possible, to improve the conditions of work of contract labour i.e., the regulation of service conditions for contract labour.

Thus apart from providing for prohibition of employment of contract labour, provisions are made for effective payment of their wages and to provide for better health and welfare of contract labour. In short the object of this Act is to do away with the abuses of the system of employment of contract labour. With this avowed object, the Act regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. Obviously the Act is not applicable to establishments performing work only of an intermittent or casual nature. The Act is applicable to every establishment employing twenty or more workmen as contract labour and to every contractor employing twenty or more workmen.

On considering these factors the Central Government or a State Government can prohibit any establishment from employing contract labour for performing any work therein:

(i) Whether the conditions of work and benefits provided for the contract labour in the establishment are satisfactory;

(ii) Whether work is incidental to or necessary for the business of the establishment;

(iii) Whether it is of perennial nature? i.e., whether said work will last for sufficient duration;

(iv) Whether it is done ordinarily through regular workmen;

(v) Whether it is sufficient to employ considerable number of whole time workmen.

This is the gist of S.10 of the Act.

APPLICABILITY – WHETHER WORKMEN ARE DIRECT EMPLOYEES?

Having regard to the provisions of the Act, it is evident that (i) the principal employer should obtain a certificate of registration u/s. 7 of the Act; and (ii) the workmen can be employed on contract labour basis only through the licenced contractor, under S. 12 of the Act. Unless both these conditions are complied with, the provisions of the Act would not be attracted. Even if one of the two conditions is not complied with the Act would not be attracted. If either of the two conditions are not complied with the workmen employed through intermediary would be deemed to have been employed by the principal employer.

– *Food Corporation of India Workers' Union v. F.C.I.,* 1992 I LLJ 257 (Guj.-D.B.).

NOTIFICATION, SUBJECT TO JUDICIAL REVIEW:

The decision regarding prohibition of employment of contract labour is always with the appropriate Government. But then such a decision is subject to judicial review as held by the Supreme Court in the case of *Catering Cleaners of Southern Railway v. Union of India*. On examining the provisions of S.10, it is clear that if the Central Government, after consultation with the Central Board, is satisfied that the works specified in Schedule annexed to the Notification Annexure 4 that is the over burden, removal, drilling and blasting in the lime stone, dolomite and manganese mines in the country, are of perennial nature and are done ordinarily through regular workmen and demand employment of considerable number of whole time workmen, it can issue a general notification like Annexure-4, abolishing contract labour in such works, having regard to the service conditions of such contract labour in general.

– *M/s. Zenith Industrial Services v. Union of India,* 1990 I LLJ 38 (Ori.D.B.).

NO ABSORPTION UNTIL NOTIFICATION:

Petitioners-Vulcanisers working in Calcutta Port Trust, engaged through contractor, claimed absorption on the contention that work performed by them, is of continuous and perennial nature. Supreme Court held that abolition of contract labour by publication of Notification u/s. 10(1) of the Act, ensures a right to the workmen for their absorption in the establishment, in which they are working as contract labour through contractor. No such notification being issued in this case, petitioners cannot claim to be straightway absorbed in the regular establishment.

– *Shaikh Jahangir Ali v. Calcutta Port Trust*, 1999 II CLR 226 (S.C.).

CLAIM TO BE TREATED ON PAR WITH REGULAR EMPLOYEES:

In the matter of rejection of claim of contract labourers working under contractors for being treated on par with regular employees, the Court, while upholding the said decision, observed that contract labourers are not and have also not found to be having a direct connection with Refinery, even though it is a State for the purpose of enforcement of fundamental rights.

– *Mathura Refinery Mazdoor Sangh v. Indian Oil Corporation Ltd. Mathura Refinery Project,* 1991 I CLR 684 (S.C.).

CONTRACTOR MUST BE A PARTY:

On behalf of workers the contention is raised that contrary to the provisions of the Act, work has been provided to contractors, who have employed scores of people, other than the petitioners who were retrenched by the principal employer. The Court held that it would be inappropriate for the Court to look into that aspect as, neither the contractor, nor those employed by them, are parties to those proceedings and any direction made, would amount to dislodging some of the people so employed, without affording them any opportunity of being heard.

– *Jitendra Kumar v. Union of India,* 1991 LIC 213 (S.C.).

FORA TO DECIDE IF CONTRACT LABOUR HAS BECOME DIRECT EMPLOYEES:

Whether the contract labourers have become employees of principal employer in course of time and whether the engagement of labourers through contractor is a mere camouflage and a smoke screen, is a question of fact. Normally Labour Court or Industrial Tribunal under the I.D. Act are competent fora to adjudicate such disputes on the basis of oral and documentary evidence. The Act was enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

– *R.K. Panda v. Steel Authority of India*, 1994 II CLR 402 (S.C.).

CONTRACT LABOUR – ABSORPTION OF:

Analysis of the cases on the point fall in three classes:

(1) Where contract labour is engaged and employment of such contract labour is prohibited by Notification by appropriate Government or by order of Industrial adjudication. There is no absorption of contract labour.

(2) Where contract is found to be sham or nominal rather a camouflage in which case contract labour working in the establishment of principal employer was held, in fact and in reality the employees of principal employer himself. Such cases in fact does not relate to abolition of contract.

(3) Where in discharge of statutory obligation of maintaining canteen in an establishment, the principal employer availed the services of a contractor and the Courts on the basis of documentary evidence brought on record in some cases have held that the contract labour would indeed be the employees of the principal employer.

– *Steel Authority of India v. National Union Water Front Workers*, 2001 III CLR 349 (S.C.).

In the same tune, it can be said on the expiry of the licence of the contractor, contractor workers cannot claim a right of absorption in the said employment may it be Railways or any factory or establishment.

DISPUTE REGARDING CONTRACT LABOUR – IMPORTANT POINTS:

In this appeal by special leave, the Supreme Court laid down the law or legal position which emerges from the provisions of the Act and Judicial decisions thereon as follows:

(i) In view of the provisions of S.10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said section. No Court including the industrial adjudicator has jurisdiction to do so.

(ii) If the contract is sham or not genuine, the workman of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute of abolition of the labour contract and hence provisions of S.10 of the Act will not bar, either the raising or the adjudication of the dispute. If however he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of contract labour under S.10 of the Act and keep the dispute pending. However he can do so if the dispute is espoused by direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of S.2(k) of the Industrial Disputes Act. He will not be competent to give any relief to the workmen of the erstwhile contractor, even if the labour contract is abolished by the appropriate Government under S.10 of the Act.

(iii) If the labour contract is genuine, a composite industrial dispute can still be raised for abolition of contract labour and their absorption. However the dispute will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute, will have to first direct the workmen to approach the appropriate Government for abolition of the contract labour under S.10 of the Act and keep the reference pending. If pursuant to such reference the

contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him, to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, whoever, contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him, can decide as to who and how many of the workmen should be absorbed and on what terms.

– *Gujarat Electricity Board v. Hind Mazdoor Sabha,* 1995 I CLR 967 (S.C.).

REPERCUSSIONS IN OTHER PLANTS – ARGUMENT IN TERROREM:

In this matter another argument was advanced on behalf of appellant that it has other thermal plants in the State, where certain type of work is done through contract labour only by contractors and the present thermal power plant is only one of them. Any decision in the present appeal will have serious repercussions in other plants. It is further contended that this might also result in total breakdown of the functioning of the Board, which could not be in the interest of the workers or a class. To say the least, the argument is one in terrorem and has only to be stated to be rejected. The Board has to manage its affairs according to the provisions of law. The Courts cannot grant it exemption from law on the ground that it will not be in a position to run its affairs.

– *Gujarat Electricity Board v. Hind Mazdoor Sabha*, (supra).

STEEL AUTHORITY OF INDIA LTD. CASE IS APPLICABLE ON ALL FOURS:

Consequent upon notification dated 8-9-1994 u/s. 10 of the Act, the contract labour in the posts of boiler operators, attendants, helpers and peons was prohibited, these appellants by writ petition, claimed that they be treated as employees of respondents ONGC. Learned Single Judge held in their favour, but Division Bench held that there are some disputed questions of facts, which cannot be gone into in writ petition and the same require investigation by Industrial Tribunal. In appeal the Supreme Court held that the decision in the case of Steel Authority of India (supra) would be applicable on all fours and the direction of the High Court be complied with, having regard to the decision in *Steel Authority of India's* case.

– *Nitinkumar Nathulal Joshi & Ors. v. ONGC Corporation Ltd.* 2002 I CLR 1113 (S.C.).

CONTRACT LABOUR WORKING AS RAILWAY PARCEL PORTERS ON RAILWAY STATIONS:

Railway Parcel Porters working as contract labour for several years, claimed permanent absorption in service. On calling for the Report of Assistant Commissioner of Labour (Central) Lucknow about the period they have worked and the permanent nature of their work, the Supreme Court followed its earlier decision in the case of *R.K. Panda v. SAI Ltd*. 1994 II CLR 402, and issued direction for absorption and regularisation of the petitioners according to the terms indicated in the said judgment and rules or circulars of the Railway Board.

– *National Federation of Railway Porters, Vendors and Bearers v. Union of India & Ors.* 1995 II CLR 214 (S.C.).

NO AUTOMATIC ABSORPTION OF CONTRACT LABOUR ON ISSUE OF NOTIFICATION:

Examining the issue as to whether automatic absorption of contract labour follows on issue of Notification u/s. 10 prohibiting contract labour, the Supreme Court held that the principal employer cannot be required to order absorption of contract labour working in the said establishment, as neither S.10 nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour, on issuing notification prohibiting employment of contract labour in any process, operation or any other work in an establishment.

- *Steel Authority of India v. National Union Water Front Workers & Ors.* 2001 III CLR 349 (S.C.).

ABOLITION OF CONTRACT LABOUR AND ABSORPTION:

High Court allowed the writ petition filed by respondent-Union claiming that workmen though employed by appellant, a show is made that they are contract labour by sham arrangements to do the work of disposal of solid waste.

Allowing the Appeal filed by the Municipal Corporation of Greater Mumbai, the Supreme Court held that directions given by the High Court, not being consistent with Constitution Bench judgment in *Steel Authorities'* case (2001 III CLR 349), impugned judgment is set aside, leaving it open to the respondent union to seek remedies available in terms of para 125 of the aforesaid SAIL Judgment, before the State Government or industrial adjudicator as the case may be.

– *Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh & Ors.* 2002 II CLR 299 (S.C.).

CONTRACT SYSTEM, A MERE CAMOUFLAGE:

In a challenge to the Award of Labour Court, granting reinstatement with 10% back wages, to the workers engaged through the contractor for cleaning, etc and removal of garbage and High Court upholding the Award for reinstatement but without back wages, the Supreme Court, while dismissing the Appeal by the Electricity Board, observed that the so-called contract system was a mere camouflage, smoke screen and disguised in almost a transparent veil, which could easily be pierced and real contractual relationship between the Board and those employees, could be clearly visualised. It is not a case in which it is found that there was any genuine contract labour system. In that event it could be abolished only u/s. 10 of the Act. In this case the so-called contractor was a mere name lender or a broker. He was not a licenced contractor and so was the Board not registered as principal employer.

– *Secretary, Haryana State Electricity Board v. Suresh & Ors.* 1999 I CLR 959 (S.C.).

EMPLOYEES IN STATUTORY CANTEEN:

The High Court allowed the writ petition, granting the claim for regularisation and absorption by canteen employees, engaged through a contractor. In appeal the Supreme Court held that ordinarily employees in statutory canteen, are workmen of the establishment for the purpose of Factories Act only.

However, considering the facts that, (i) these workmen have been employed for long years, and (ii) continued despite change of contractor running canteen; and (iii) the contractor is reimbursed for wages paid to these employees; and (iv) supervision and control of canteen being exercised by the appellant, the contractor is nothing but an agent or manager of the appellant. Workmen have protection of continuous employment. Thus it being a statutory canteen, the respondent workmen are in fact the workmen of the appellant-Corporation.

– *Indian Petrochemicals Corporation Ltd. v. Sramik Sena & Ors.* 1999 II CLR 634 (S.C.).

NON-APPLICATION OF MIND IN ISSUING NOTIFICATION:

The High Court rejected the challenge given to the Notification of Government of Tamil Nadu, prohibiting contract labour, in the process of sweeping and scavenging in the establishments/factories employing 50 or more workmen. The Supreme Court, while quashing the impugned notification, observed that no definite view, was expressed by Labour Advisory Board and in the absence of the same and in the absence of any other material, it is not very clear as to how the Government could have reached the conclusion one way or the other. Thus the decision of the Government in issuing the impugned notification u/s. 10(1) of the Act, is vitiated because of non-consideration of relevant materials.

– *L.&T. McNeil Ltd. v. Government of Tamil Nadu,* 2001 I CLR 804 (S.C.).

In a challenge to the Central Government Notification dated 9-12-1976, prohibiting employment of contract labour for sweeping, etc. in the buildings owned and occupied by establishments in respect of which Central Government is appropriate Government, the Supreme Court held that the said notification apart from being an omnibus notification, does not reveal the compliance of S.10(1) of the Act. Besides the Notification also exhibits non-application of mind by the Central Government and hence impugned notification cannot be sustained.

– *Steel Authority of India Ltd. v. National Union Water Front Workers,* 2001 III CLR 349 (S.C.).

DIRECTION TO GOVERNMENT TO ISSUE NOTIFICATION U/S.10 OF THE ACT, NOT PROPER:

In a challenge to the Order passed by Single Judge to Central Government to issue notification u/s. 10 of the Act and to the employer to absorb the contract labour, the Division Bench held that there is no relationship of employer and employee between principal employer and the contract labour. The workmen, having requested Central Government to issue Notification u/s. 10 of the Act, are estopped and precluded from contending that they are direct employees of principal employer. Central Government has to take into consideration factors enunciated in S.10(2) of the Act, which would include the question as regards the number of employees, who may be employed on regular basis on abolition of Contract Labour. The learned Single Judge could only issue a direction to the Central Government to consider representation of writ petitions and pass appropriate order within a time frame. Order of single Judge is modified as above.

– *Indian Oil Corporation Ltd. v. I.O.C. Maintenance Contractors' Workers Union,* 2001 I LLJ 643 (Cal.D.B.).

REFUSAL TO ABOLISH CONTRACT LABOUR:

Respondent Union challenged by writ petition the Government Circular refusing to abolish contract labour in civil works and carpentary of appellant Company. Employer's Association conceded that this issue could not be decided in writ petition. High Court directed reference of industrial dispute, framing issues to be decided by Industrial Tribunal and meanwhile even granted interim relief to workers.

Allowing the Appeal, Supreme Court held that it is appropriate Government to apply its mind and satisfy itself about the existence of dispute, before deciding to refer the dispute. The exception is when the Court finds

that the refusal to refer the dispute was unjustified. The High Court should not have given the directions, it did.

– *Rashtriya Chemicals and Fertilisers Ltd. v. G. Employees Association,* 2007 (4) LLN 12 (S.C.).

WHETHER CONTRACT LABOUR HAS TO BE ABSORBED ON ABOLITION OF CONTRACT LABOUR?:

Supreme Court held that on abolition of contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. The Bombay High Court has correctly held that the High Court under Art. 226 of the Constitution, would direct the principal employer to absorb the contract labour, after its abolition, even though some of the contractors have violated S.12 and principal employer has violated S.7 of the Contract Labour (Regulation and Abolition) Act, 1970.

– *Air India Statutory Corporation v. United Labour Union,* 1997 I CLR 292 (S.C.).

The Central Administrative Tribunal directed absorption of contract labour working on Eastern Railway uninterruptedly since 1988 and doing the work of perennial nature. Affirming the view taken by the Tribunal, Supreme Court observed that there is no denial on the part of the appellant that the respondents are doing the work of perennial nature. Moreover Tribunal has given sufficient discretion to the Eastern Railway Administration. The directions contained in the order of Tribunal, are quite fair and no interference with the same is necessary.

– *Union of India v. Subir Mukherji & Ors.* 1998 LIC 1854 (S.C.).

OF CONTRACT LECTURER – DIRECTION ILLEGAL:

In a challenge to the directions given by Administrative Tribunal to the petitioner to consider the case of the respondent for absorption as lecturer, the Supreme Court, while allowing the appeal, held that the respondent, who was appointed on contract basis, was terminated from service for remaining absent from duty, which order was maintained by the Tribunal. As such there cannot be any absorption or regularisation of a person, who is not in service. Impugned direction by Tribunal is illegal. Regularisation is to be done under a proper scheme and the respondent does not fit in for the same. Impugned order is set aside.

– *Directorate of College Education v. S. Seeni,* 1998 II LLJ 1116 (S.C.).

CANTEEN WORKERS, ABSORPTION BY PRINCIPAL EMPLOYER:

Whether canteen workers engaged by contractor to run a statutory canteen in the factory, can claim absorption as workmen of the respondent Corporation? Learned Single Judge allowed their writ petition, but Division Bench reversed that decision of the Single Judge. Upholding the judgment of Division Bench, in appeal the Supreme Court held that just because management exercises some control over canteen in certain matters, it does not mean that canteen employees are employees of respondents. Contractor having been given a free hand under the agreement with regard to management of employees working in canteen, appellants cannot be considered to have become employees of respondent Corporation.

– *Haldia Refinery Canteen Employees Union v. Indian Oil Corporation Ltd.* 2005 II CLR 457 (S.C.).

NO AUTOMATIC ABSORPTION:

In a challenge to the direction given by the High Court to the appellant Corporation to absorb contract labour (i.e. Scavengers) herein, on the ground that their work is of perennial nature, the Supreme Court held that the impugned direction by High Court is not sustainable, as there would be no automatic absorption of contract labour. Remedy of affected contract labour is to approach Industrial Tribunal/Court.

– *A.P.S.R.T. Corporation v. G. Sriniwas Reddy,* 2006 II LLJ 425 (S.C.).

ABSORPTION OF CONTRACT LABOUR:

The Supreme Court in another matter held that neither Labour Court nor High Court could determine question, as to whether contract labour should be abolished or not, same being exclusive domain of appropriate Government. Before issuing notification under the Act, State would have to proceed on the basis that principal employer had appointed contractor, which was valid one, but while referring dispute for industrial adjudication, validity of appointment contractor, would itself be an issue, as State must prima facie satisfy itself that there exists a dispute as to whether workmen, in fact, are not employed by a contractor, but by management. For exercising jurisdiction u/s. 10 of the Act, appropriate Government is required to apply its mind before making a reference on materials put before it by workmen and/or management as the case may be, and while doing so, it may be appropriate for the same authority on the basis of materials that a notification u/s. 10(1)(d) Act be issued although it stands judicially determined that the workmen were employed by the Contractor.

– *Steel Authority of India v. Union of India*, 2006 III CLR 659 (S.C.).

CLAIM TO REGULARISATION – CONTRACT LABOUR – NOTIFICATION TO ABOLISH:

State Governments issued notifications prohibiting contract labour in establishments of FCI, of which it was the appropriate Government. The Central Government too by Notification dated 9th December, 1976 prohibited contract labour in certain activities in buildings of establishments, of which it was appropriate Government. In a challenge to the Notifications, the Supreme Court while allowing the appeal, held that core question is interpretation of *Steel Authority of India's* case judgment, for which it is necessary to see action taken on 9th December 1976 notification. That Notification has not been given effect to and meanwhile by

notification dated 28th May 1992, there was no prohibition to engaging contract labour in FCI establishments. The effect of the 1992 notification issued u/s. 10(1) of the Act, could not be taken away by circulars of Central Government or of appellant to engage contract labour in the light of the earlier notification dated 9th December 1976. The right of the workmen for obtaining a writ of mandamus must be based on a legal right. The Court in *Steel Authority of India* case recognised an existing right and not a future one. Writ petitions of workmen do not disclose names of contractors; whether they are registered, terms and conditions of employment, from which date each workman were employed and by which contractor. No authority or forum has scrutinized records.

– *Food Corporation of India v. Pala Ram*, 2008 III LLN 723 (S.C.).

WORKMEN ARE NOT OF PRINCIPAL EMPLOYER:

In a challenge to the Award passed by Tribunal holding certain persons to be workmen of the appellant and the Award being upheld by the High Court, in Appeal, Supreme Court held that when the matter was decided by High Court*, Air India's* case (1997 I CLR 292 SC) held the field. But in view of pronouncement of Constitution Bench in *Steel Authority of India's* case (2001 III CLR 349 SC), the matter needs to be re-examined by the High Court.

– *Employers in relation to the Management of Sudamdih Colliery of Bharat Cooking Coal Ltd. v. Their Workers,* 2006 I CLR 538 (S.C.).

OF CANTEEN EMPLOYEES:

Request of members of respondent Association (i.e., canteen employees) claiming to Government employees seeking regularisation in service, was rejected. Their writ petition was allowed by single Judge. Division Bench modified the relief granting regularisation and back wages from the date of judgment of single Judge. While allowing the appeal by the State, Supreme Court held that equation of canteen workers on par with employees of Hospitality Organisation of the State is impermissible. Posts in Hospitality Organisation might have been sanctioned. Court cannot frame a scheme by itself or direct the State to frame a scheme for regularising services of ad hoc employees. Recourse to remedy of writ is not appropriate in such cases.

– *State of Karnataka v. K.G.S.D. Canteen Employees Welfare Association,* 2006 I CLR 407 (S.C.).

On consideration of all the above noted case law, in conclusion it can be said that the tests laid down by Supreme Court, to be adopted for determining, if employees in statutory canteens are employees of the establishment i.e., principal employer are to be constantly kept in view:

(1) The contention has been there since the inception of appellant's factory.

(2) The workers have been employed for long years and despite a change of contractors, they are continued to be employed in the canteen.

(3) The premises, furniture, fixtures, fuel, electricity, utensils etc. have been provided for by the appellant.

(4) Wage of canteen workers are to be reimbursed by the appellant.

(5) The supervision and control on the canteen is exercised by the appellant through the authorised officer, as can be seen from various clauses of contract between the appellant and the contractor.

(6) The contractor is nothing but an agent or a Manager for the appellant who works completely under the supervision, control and directions of the appellant.

(7) The workmen have the protection of continuous employment in the establishment.

– *VST Industries v. VST Industries Workers' Union,* 2001 I CLR 590 (S.C.).
