LABOUR LAW PROJECT ON

WORKMAN

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WORKMAN

INTRODUCTION

Labour market is not homogenous. It is broadly segmented into unorganised and organised, wage earners and self-employed, skilled, semi-skilled and unskilled and so on. Every regulation relating to social security and working conditions has different meaning and implication for every segment. The life of a worker is also not homogenous, throughout his living, at different stages of life. The perception, understanding and need of the things change and vary at different periods of life such as adolescence, youth, and old age. The meaning of social security is not the same throughout the life of a worker. In the same way, the perception pertaining to decency undergoes a change during the life cycle of a worker. For him decency has a different meaning at different levels of age. At the young age, it is something else than what it may be during the old age. It means the social security and decency are not only significant for a worker but also have a different meaning at different levels of living during the life of a worker. For any regulation, which can become a source of employment promotion, it is very important that it should fulfill its purpose. From this point of view, there is every need to evaluate different legislations/rules/ acts in regard to social security and decency of workmen.[1]

Workmen under various labour legislation are as follows;

1. Industrial Disputes Act, 1947

[1] DR. BALWINDER SINGH WORKER'S LIFE, WORK AND DECENCY : NEEDED REGULATORY MEASURES IN INDIA (2009)

2. Workmen's Compensation Act, 1923
3. Industrial Employment (Standing Orders) Act, 1947
4. Crown Construction Contracts Act

Workmen under Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 (Act) is the governing legislation that provides the machinery and procedure for the amicable settlement of conflicts between an employer and employee so that industrial peace is maintained. This Act applies to all industries and establishments which employ workers, irrespective of the number employed. Under Section 2(j) of the Act, the definition of "industry" means any business, trade, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The term "industry" has evolved, and at present it covers even establishments run without any profit motive, such as government undertakings, statutory bodies and corporations, clubs, chambers of commerce, educational institutions, co-operatives, research institutions, charitable projects and other kindred activities.[2]

To determine if an employee is a workman or not under the Act is a subject of intractable controversy. When an employee is involved in a dispute with the employer or in a situation where his employment is terminated and such individual wants to avail the protective umbrella of the Act, the employer contests by raising an objection that the employee is not a workman within the definition of the Act. This article discusses various factors which determine the circumstances when an employee will be considered a workman.

[2] Dr. V.G. Goswami- Labour Industrial Laws (2010)

Statutory definition & its analysis

The term 'workman' has been defined under Section 2(s) of the Industrial Disputes Act, 1947."workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. [3]

The definition can be split into three parts.

The first part envisages that for any person employed in an industry to qualify as a workman, he must be engaged in a type of work mentioned in the definition. The second part gives an extended meaning to the word workman as it includes employees dismissed,

[3] Dr. V.G. Goswami- Labour Industrial Laws (2010)

discharged or retrenched in connection with an industrial dispute or whose dismissal, discharge or retrenchment has led to an industrial dispute. The third part is exclusionary in nature.

Therefore, it is clear that all workmen are employees but all employees may not be workmen for the purpose of the Act. In order to be a workman it is not necessary that a person must be employed in a substantive capacity. This means every person employed in an industry, regardless of his status of an apprentice (considered as a trainee), permanent or probationer will be treated as a workman. Not all apprentices will fall within the four corners of the definition; Indian jurisprudence has made it clear that an apprentice be treated as a workman provided he performs duties of a workman.

The important question is what does it mean to be a workman? The answer lies in the fact that every employee covered in the definition can avail various benefits under the Act. A workman can raise an industrial dispute with the employer regarding discharge, dismissal, retrenchment or termination of his services. Section 25F of the Act provides mandatory conditions for retrenchment of workers.

However, all those employees who do not fall within the ambit of the definition of a workman will not be entitled to benefits under the Act. **In Purandaran vs. Hindustan Lever Limited**, the petitioner adopted the Voluntary Retirement Scheme (VRS) [4] introduced by the respondent and, subsequently, left employment. Thereafter, he learned that there was a change of terms in the VRS under which 15% in excess of what the petitioner got was payable. The petitioner claimed the payment of the enhanced amount from the respondent and raised an industrial dispute. The Court held that the petitioner had adopted the VRS, which amounted to his resignation, and, as a result thereof he is not

[4] [2001 LLR 525 Kerala HC]

entitled to claim the status of a workman and so cannot raise any industrial dispute. Clearly, the prerequisite for an industrial dispute is that the person raising it must fulfill the criteria of a workman.

IMPORTANT POINTS

A. The object of Industrial Disputes Act, 1947 is to make provisions for the investigation and settlement of industrial disputes, and for certain other purposes between employer and workers. Therefore it is necessary to give an elaborate definition explaining what sort of persons come under the purview of 'workman'. The approach of Section 2(s) is a positive one and not a negative one.

B. The word 'workman' means any person employed in any industry etc. It is a very exhaustive term, including any person, apprentice employed in any industry to do any manual, skilled, unskilled, technical, operational, clerical or supervisory work for hire or reward etc.

C. Certain categories of persons viz the persons having managerial or administrative capacity are excluded from the definition of workman. There is a difference between 'supervisory', 'managerial' or 'administrative' capacity.

D. Whether the piece-rated workers are to be treated as workmen?

   This is the most important question raised before the Courts on several occasions. In the leading **case Silver Jubilee Tailoring House vs Chief Inspector of Shops and Establishments and Shining Tailors vs Industrial Tribunal**, the Supreme Court gave judgments in favour of piece-rated workers holding them as workmen within the meaning of Section 2(s) of the Industrial disputes Act, 1947.

Silver Jubilee tailoring House vs Chief Inspector of Shops and Establishments [5]

Introduction: Since the beginning of the human civilization upto the start of industrial revolution, the employer used to have skills in his profession. He appointed workers under him to assist and improve the production. If the worker had any doubt with regards to the work, he approached the employer and clarified the same. The employer was able to instruct his workmen what is to be done and how it is to be done. The employer thus could exercise his control over the knowledge and the skills that he possessed. This was the situation upto the industrial revolution.

Even in the earlier cases in Great Britain, the employer exercised control over his workers in extracting the work. This distinction of telling workers what to do and how it is to be done was based upon the social conditions of an earlier age. It was assumed that the employer was superior in the technology and was therefore aware of technical methods in manufacturing. Therefore in the agricultural society and in the earlier stages of Industrial revolution, the owner was regarded as superior to the workmen in knowledge, skill and experience. This was called as 'control test'. It reflected a state of society in which the ownership of means of production coincided with the profession of technical knowledge and the skills were largely acquired by being handed down by one generation to the next by oral tradition and not by being systematically imparted in institutions of learning from schools or technical training institutions. The control test postulates a combination of managerial and technical functions in employer and his workmen.

[5] (1973) II LLJ 495 SC)

In the modern context, this division and control test are not useful because today economy plays an important role in establishing an industry and managing it. A rich person having no knowledge about an industry to be established, can establish the same with the help of technocrats. Money plays an important role in the modern economy. An ordinary graduate or a matriculate can establish a five star hotel by employing experts and people engaged in the technical field. Today a drastic division has been established between the managers and technocrats. Control is obviously an important factor. In some cases, it may still be a decisive factor, however in every case it may not be so. This was decided in the leading case.

Brief Facts: In this case the owner established 'Silver jubilee tailoring House'. He supplied cloth to the tailors and paid remuneration on a piece rate. He had never controlled them in any manner apart from supplying the cloth as per the capacity of the tailor and paying money as per the piece-rate. He provided sewing machines, cloth and other sewing materials to them. He did not maintain any registers under the labour laws. The Chief Inspector of Shops and Establishments prosecuted him. The lower courts gave the judgment treating the piece-rated tailors as the 'workmen' within the meaning of Section 2(s) of the industrial disputes Act, 1947. He appealed to the Supreme Court. He argued that he had no technical knowledge of tailoring and he had engaged them on contract basis, that too on piece-rate, and that they were not regular employees, and also that his was a seasonal business.

JUDGMENT: The Supreme Court gave judgment against the owner and treated all the piece-rated tailors as workmen.

PRINCIPLES: (i) Mathew J. observed: "it is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting 'control' as meaning the power to direct how a servant should do his work, the Court has been applying a concept suited to a past age, but not now."

(ii) The rule laid down in this case has been applied in subsequent cases i.e. **Shining Tailors vs Industrial Tribunal**[6] etc.

(iii) The tailors working at one place at piece-rate for several employers are not treated as workmen.

E. In **R.G. Makwana vs Gujarat State Road Transport Corporation**[7] (, The High Court of Gujarat has held that any person who has been dismissed, discharged or retrenched in connection with or as a consequence of a dispute is also included within the definition of the workman under Section 2(s). What is important and relevant is the date of reference. As on that date requisite conditions of the definition of the term 'workman' as per Section 2(s) have to be satisfied. In this case the workman was a dismissed workman and his salary on the date of reference was clearly covered by the main definition of the term workman and did not fall within the accepted category of clause (iv).

F. In **Arkal Govind Raj Rao vs Ciba Geigy of India Ltd**[8] it was observed that : where an employee has multifarious duties and a question is raised whether he is a workman or some other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to

[6] (1983 II LLJ 413 SC)
[7] 1987) II LLJ 172
[8] (1985) II LLJ 401(403) (SC)

do some other work, which may not be necessarily in tune with basic duties, these additional duties cannot change the character and status of the person concerned. In other words, dominant purpose of the employment must first be taken into consideration and gloss of some additional duties must be rejected while determining the status and character of a person. Therefore, in determining which of the employees in various categories are covered by the definition of a workman one has to see what is the main or substantial work which he is employed to do.

Factors which determine when an employee will be a workman

(i) Contract of employment: The first essential condition for a person to be a workman is that there must be a contract of employment between the parties and a relationship of employer-employee or master-servant must exist. Indian courts have ruled that the prima facie test to determine the relationship between master and servant is the existence of the right in the master to supervise and control the work done. It is important to be able to direct not only the work to be performed but also the manner in which it shall be done.

An employment contract also establishes an employer-employee relationship, and in the absence of which no person can claim to be a workman. For instance, professionals like doctors, lawyers, physicians who render part-time services in various institutions can claim the status of workman only when it is established that they render services to an employer who owns an industry.

Additionally, the employee must be paid some remuneration irrespective whether the terms of his employment are express or implied.

(v) Contract labour: At this stage, it is pertinent to discuss an important and a growing segment of the workforce - contract labour. Large industrial

> operations increasingly use the services of an independent contractor who, in turn, supplies people to an enterprise. Where a contractor employs a workman to do the work which he contracted with a third person (a company), the workman of the contractor will not become the workman of the management. For instance, employees engaged by a contractor running the canteen of a factory cannot be the employees of the company.

The contractor is responsible for payment of remuneration to the employees and not the management. However, under Indian law, the contract workers are legally bound to the contractor, but if the contractor defaults in providing any benefits that a contract labour is entitled under the law, the principal employer is liable. The principal employer will be the company where the workers work. Contract labourers under the law are eligible to receive, from the contractor, benefits such as provident fund and employee state insurance.

There is ambiguity whether a contract worker will qualify as a workman. There have been situations where such workers have come within the ambit of the definition of a workman.

The terms of the contract between the contractor and the Company govern the employment of the contract labour. The triggers for creation of a potential industrial dispute for contract and temporary/casual employees may arise when there is: (i) a tendency/frequency to hire workers who are engaged in the activities that are contrary to any local notification prohibiting employment of contract labour, (ii) non-compliance with provisions of legislations which require employers to provide benefits to its employees including contract labour, and (iii) excessive control/check on the activities of contract labour. The Courts have held that if the principal employer keeps control on

contract labour, including granting them leave or extending any salary advance, then the contract between the contractor and principal employer is a sham. In Ram Singh & Others v. U.T. of Chandigarh;[9] both the contractor and contract labours were held to be direct employees of the principal employer.

(vi) Employment in an industry: Another essential condition for a person to be a workman is employment in an "industry" as defined in Section 2(j) of the Act.

It is not essential that the employment in the industry should have direct nexus with the main industrial activity; the employees who are employed in connection with operations incidental to the main industry will also be treated as workmen. For instance, if workers are employed by a sugar factory to remove press-mud from the sugar factory, the workers will be considered workmen, as removing press-mud is an activity which is the part of the sugar factory.

(vii) Nature of work: Another determinative factor is the nature of duties and functions enumerated in the definition of workman. This means that in order to become a workman, an employee must be engaged in mainly seven types of work i.e. manual, unskilled, skilled, technical, operational, clerical and supervisory work. However, under modern industrial conditions large numbers of employees are often required to do more than one work. In such a scenario, it becomes necessary to determine under which of the seven classifications the employee will fall in order to determine whether he qualifies as a workman. The scope of the present discussion is limited to the people who are engaged in doing technical, supervisory and managerial activities.

[9] (2004) I LLJ 227

(viii) Technical work: Any person who is engaged in doing any technical work which involves special mental training or scientific or technical knowledge, will fall under the definition of workman. However, every work of technical nature which involves technical skill does not necessarily give rise to the relationship of employer and employee. Technical work requires training or knowledge or expertise of a particular art or science to which that works pertains. For example, a doctor performing the duties of examining patients, diagnosing diseases and prescribing medicines is considered to possess specialized skills required for performing the job. As a result, he will qualify as a workman doing technical work only when it is established that he is employed in an industry, and where the condition of an employer-employee relationship is fulfilled. Doctors rendering professional services to various establishments or engaged in private practice where no relationship of employment is created will not be entitled to claim the status of workmen.

In **Bombay Dyeing and Manufacturing Co Ltd v RA Bidoo**[10] it was held that a person is said to be employed in a technical capacity if he possess some special skills. In the present case, the respondent was employed as a camera operator in the company. He was working in the screen-making department of textile mills and was responsible for testing new chemicals and graphite films and, accordingly, advice the management of their suitability. The company terminated the employment of the respondent without assigning any reason. The respondent raised an industrial dispute contending that his termination was not justified. The Court considered the nature of his work and held that the work done by him was not of a technical nature as it did not require application of any special

[10] [1990 1 LLJ 98 Bombay HC]

knowledge which would result in the creation of a work peculiar to the talent of the respondent. Hence, the petition was dismissed.

Therefore, it is pertinent to note here that there are two guiding factors which determine whether a technically qualified person is a workman or not. He will become a workman only when it is established that he is employed in an industry and performing work of a technical nature. However, in order to determine whether the nature of duties performed by a workman will fall under the technical category, the court has to consider the facts and circumstances of each case.

(ix) Supervisory work: In determining disputes regarding the nature of work performed by an employee and whether it was supervisory in nature or otherwise, the court considers the primary duties of an employee and functions assigned to him. An important consideration for this section is that it deals with persons doing supervisory work and earning below Rs1,600 a month. An employee working in a supervisory capacity whose monthly salary is above the aforesaid limit will not qualify as a workman. In practice, very few people will earn the sum mentioned, and yet be supervisors. Therefore, the legislators need to evaluate the wisdom of retaining this amount.

In any event, Indian courts have ruled that where an employee has multifarious duties and a question is raised whether he is a workman or not, the court should consider the primary and basic duties of the person concerned. The determinative factor is the main duties of the concerned employee and not some work done incidentally. For instance, where an employee is mainly engaged in supervisory work and if he is asked incidentally to do some clerical work, these additional duties cannot change the character and status of the person and he will be considered as a workman doing supervisory work.

In **Management of Sonepat Cooperative Sugar Mills Ltd. vs Ajit Singh** [11] , the respondent was appointed as a legal assistant by the appellant to prepare written statement and notices and draft legal opinions. He also used to perform some quasi-judicial functions like conducting departmental enquiries against the workmen employed in the industrial undertaking of the appellant. While he was employed by the appellant in that capacity, it was decided to abolish the position. The respondent raised an industrial dispute raising his contention that his termination was not justified. However, the appellant opposed the respondent's contention and pleaded that he was not performing any managerial or supervisory duties and, therefore, would not be a workman. The Supreme Court held that the job performed by the respondent was of "legal clerical nature" which involves creativity of mind. Further, merely because the respondent had not performed any managerial or supervisory duties did not disqualify him as a workman.

Moreover, if the workman is mainly engaged in work which is of manual, clerical or technical nature, the mere fact that some supervisory or other work is also done by him incidentally or as a small fraction of his work, will not take him out of the purview of the definition of a workman. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of a person.

(x) Managerial or administrative work: The definition of workman specifically excludes a person working in a managerial or administrative capacity. The mere designation of a person as a manger or an administrator of an industry is not sufficient to conclude that he is not a workman. To ascertain his status as a workman the nature of duties assigned to him are relevant. For instance, while

[11] [2005 1 LLJ 1122]

considering whether a software engineer is a workman or not it is essential to see whether his position has administrative or managerial powers. If he is working only in a managerial or administrative capacity he will not be a workman.

In Central Bank of India, Lucknow vs. Assistant Labour Commissioner, Kanpur and others[12], respondent was a bank manager performing managerial and administrative function as an executive officer of the branch. On account of his suspension, he raised an industrial dispute contending that his suspension is illegal. The court held that the role of a branch manager essentially consists of ensuring business development by continuously educating his customers along with his staff on various services the bank can offer. Therefore, on account of the nature of his duties which are purely of managerial and administrative nature like planning and organizing branch's performance, staff administration and development etc. he cannot come under the definition of workman. Hence, the petition was dismissed.

PROTECTED WORKMEN

Who is a protected workman?

A protected workman in relation to an establishment means a workman who, being an office bearer or member of the executive committee of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

[12] [2000 LLR 84 Allahabad HC]

Rule 61(1) of Industrial Disputes (Central) Rules, 1957, provides that every registered trade union connected with an industrial establishment shall communicate to the employer before the 30th April every year, the names and addresses of the officers of the union who are employed in that establishment who should be recognised as protected workmen. Rule 61(2) makes it obligatory on the part of employer to recognise such number of workers as provided u/s 33 (4) of the Industrial Disputes Act, 1947, as 'protected' for a period of 12 months, within fifteen days of receipt of the proposal from the union.

However, management is entitled to decline recognition as protected workman to a person nominated by the union, if any disciplinary proceeding is pending against such workman. Union certainly cannot exercise their power under Rule 61(1) to give immunity to an employee against whom disciplinary proceedings initiated by the management are pending, by nominating his name for recognition as protected workman. **HLL Lifecare Ltd Vs. Hindustan latex Labour Union (AITUC)]**[13]

How many protected workmen?

As per Section 33 (4) of the Industrial Disputes Act, 1947, the number of workmen to be recognised as protected workmen shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen.

[13] W.A 1171 of 2010

Where the total number of names received by the employer exceeds the maximum number of protected workmen, admissible for the establishment, u/s 33(4) of the Act, the employer shall recognise only such maximum number of workmen as "protected".

Where there are more than one registered trade unions in the establishment, the maximum number of protected workmen shall be distributed among the unions in such a way that each union shall have representation as protected workmen in proportion to the membership of the unions. If the number of protected workmen allotted to a union is less than that proposed by the union, the union will have to select from the proposed list the names of such persons who should be recognised as protected workmen and intimate the names to the employer within five days.

Rights of Protected Workmen

Section 33 (3) of Industrial Disputes Act, 1947, provides that during the pendency of any conciliation procedure before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, the employer should not initiate any action against any protected workman concerned in such dispute-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Remedy for employer

If an employer wants to take action against a protected workman during the pendency of a conciliation proceeding, before the Conciliation Officer, Board, Arbitrators, Labour Court, Tribunal or National Tribunal, he should get express permission from the conciliation Officer, Labour Court or Tribunal, as the case may be, by applying in form J. It may be remembered that application for approval should be made before the action for change in service conditions or discharge or dismissal, as the case may be, becomes effective [**McKenzie & Co Vs Workmen**.[14] At the same time, during the pendency of application for dismissal of a worker u/s 33, the employer can place him under suspension.

[14](AIR 1959 SC 389)

WORKMEN'S COMPENSATION ACT, 1923

The Workmen's Compensation Act, 1923 is really the first beneficial legislation for labour in India. While the trade unionism and collective bargaining were in preliminary stage, the then British Government enacted this statute for the welfare of labour and their bereaved families. It is essentially a social assistance measure, as it places the entire responsibility on the employer for the payment of compensation for death, permanent or partial and temporary disablement. By enacting the Workmen's Compensation Act, the rigid formalities and technicalities were removed. Speedy remedy is now possible by the quasi-judicial decision of the Commissioner.

Power of Commissioner to award more compensation

The Commissioner has power to award compensation more than what is claimed by the workman if the facts do warrant such an award; **Karnataka State Road Transport Corporation v. B.T. Somasekharaiah**, [15]

Important Objects of the Act

(i) It gives cheap and quick remedy to the injured workmen or the dependants of the deceased workmen.

(ii) Civil Courts are excluded.

(iii) The Commissioner is empowered to grant immediate relief.

(iv) The Commissioner is not bound to follow the technicalities and formalities of a Court. He is a quasi-judicial authority.

(v) The Act clearly defines injury, workman, accident arising out of and in the course of employment, methods for calculating the compensation etc.

[15] 1994 LLR 251 (Karn)

(vi) The definition of a workman given under this Act is wider than any other labour legislation.

(vii) Fee prescribed on application is only normal and lowest

(viii) It is the first labour welfare legislation in India

(ix) Though the Act was enacted in 1923,the spirit of the Constitution Of India, 1950 is seen in it.

Section 2(1)(n) of the Workmen's Compensation Act,1923 defines 'workmen'

"workman" means any person who is—

(i) a railway servant as defined in 3[clause (34) of section 2 of the Railways Act, 1989 (24 of 1989)] not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

[(ia) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;]

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union ; and any reference to a workman who has been injured shall, where the workman is dead, includes a reference to his dependents or any of them.[16]

IMPORTANT POINTS

A. Section 2(1)(n) of the Workmen's Compensation Act, 1923 defines 'workmen' for the purposes of awarding the compensation to workman or to his dependants. For this purpose, it differs with the definitions given in other labour and industrial legislations.

B. Driver: A driver working in private or public sector is a workman. Even a substitute driver working for two days on a lorry is a workman within the meaning of this section. Example: A is the lorry owner. B is A's lorry driver. For the purpose of this Act, B is the workman of A. This was decided in **Oriental fire and General Insurance Co. Ltd Vs. Union of India**.[17]

C. Casual employees appointed for a particular purpose are not 'workmen' within the meaning of Section 2(1)(n). Daily rated workers are the casual workers. If a worker works only one day on daily wages, and dies, the employer is not liable. If a worker is appointed for six months or more, he is treated as a worker.

   In **Patel Engineering Co. Ltd vs Commissioner for WC**[18], a workman worked under a contractor on daily rate. He was paid weekly. He worked for one month.

[16] Dr. V.G. Goswami- Labour Industrial Laws (2010)
[17] (AIR 1975 AP 222)
[18] (1978(1)LLJ 147 AP

The Andhra Pradesh High Court held that he was not a casual employee, but a worker within the meaning of Section 2 (1) (n).

D. A person engaged to whitewash on wages is a workman. A person engaged to whitewash on contract is not a workman. Case Law: Danni **Devi vs. Gurbaksh Singh** [19]

E. In **Divisional Railway Manager, S.E. Rly vs M. Laxmibai**,[20] The Court held that a railway servant drawing less than 1000 per month iis a workman.

F. In **Juthi Devi and others vs. pine Chemical Ltd and another**[21]. In this case a watchman was appointed by a chemical factory. His duty was to watch and ward. He was assaulted by the thieves. Due to injuries he died. The dependants claimed compensation. The management raised objection that the watchman was not a worker, as he was not concerned with the manufacturing process of the industry. The High Court gave judgment in favour of the dependants and ordered the management to pay compensation. The High Court held that the workman was employed in a premise where manufacturing process intended to be carried on was not necessarily required to be actually connected with the manufacturing process. A watchman was not a contributor to the industry and therefore he was a workman.

G. In **Champal vs. Daryavbai and others**[22]. In this case, A-the house owner had given construction of a wall on contract to B- a maistry. As per the agreement, B had to construct the wall and to take contracted amount @ square feet. While B was constructing, it was collapsed and he died. The High Court gave judgment that B was a worker and A was laible to pay compensation to dependants of B.

[19] (1973 ACJ 492 Del.)
[20] (1984 ACJ 545 Ori)
[21] (1990) 2 TAC 689 J&K HC)
[22] (1992) 65 FLR 589 MP

The Court held that there was a clear distinction between an independent contractor and a worker. A person agreeing to work personally is a workman. A person agreeing to get work done by others is an independent contractor. In case of independent contractor, owner is not liable to pay compensation. In case of a workman, the owner is held liable.

Basis for the calculation of compensationThe basis for calculation of compensation is monthly "wages"; **In Zubeda Bano v. Maharashtra Road Transport Corporation**,[23]

"Batta" does not amount to "wages" for computing compensation

"Batta" paid to a workman per day to cover special expenses incurred by him due to nature of his employment does not amount to "wages" for the purposes of computing compensation;New India Assurance Co. Ltd., Hyderabad v. Kotam Appa Rao, 1995 LLR 609 (AP).

Conditions for treating a person as workman

From the definition of 'workman' given in section 2 (1) (n) of the Act, it is clear that for not treating a person as workman, two conditions are required to be proved namely that his employment is of casual nature and he is not employed for the purpose of employee's trade or business and the onus is on the employer to prove these conditions; **Mangala Ben v. Dalip Motwani**[24],

[23] 1990 LLR 287 (Bom
[24] 1998 LLR 656

Industrial Employment (Standing Orders) Act,1947

There are 'service conditions' or 'service rules' for various employees like Government employees, bank employees, LIC employees etc. The Industrial Employment (Standing Orders) Act, 1947 is designed to provide service rules to workmen. The object of the Act is to require employers in industrial establishments to formally define conditions of employment under them. What are 'Standing Orders' - 'Standing Orders' means rules of conduct for workmen employed in industrial establishments. 'Standing orders' means rules relating to matters set out in the schedule to the Act. [section 2(g)]. The schedule to the Act requires that following should be specified in Standing Orders - (a) classification of workmen i.e. temporary, badli, casual, permanent, skilled etc. (b) manner of intimating to workmen working hours, shift working, transfers etc. (c) Holidays (d) Attendance and late coming rules (e) Leave rules (f) Leave eligibility and leave conditions (g) Closing and reopening of sections of industrial establishment (h) termination of employment, suspension, dismissal etc. for misconduct and acts or omissions which constitute misconduct (i) Retirement age (j) Means of redressal of workmen against unfair treatment or wrongful exactions by employer (k) Any other matter that may be prescribed.

Section 2 [(i) "wages" and "workman" have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947).[25]

Under Crown Construction Contracts Act. "workman" means a person who has a contract

[25] Dr. V.G. Goswami- Labour Industrial Laws (2010)

with a contractor, or with a subcontractor who has a contract with a contractor, to provide work on a contract. 1972, c.8, s.1; 1981, c.19, s.1.

Definition of ‘ worker ‘ under **the Factories Act, 1948**

“Worker" means a person employed, directly or by or through any agency (including acontractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufactu ring process, or in cleaning any part of themachinery or premises used for a manufacturing,process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of theUnion.

The Apprentice Act , 1961 :“ Worker “ means any person who is employed for wages in any kind of work and gets his wages directly from the employer but shall not include as apprentice referred to his clause.[26]

[26] Wikipedia.com

WORKMEN UNDER INTERNATIONAL LAW

SINGAPORE LAW

WORK INJURY COMPENSATION ACT

The Work Injury Compensation Act ('WICA') came into force on 1 April 2008 replacing the Workmen's Compensation Act. WICA applies to all workplace injuries that happen on and after 1 April 2008; for accidents that occurred before 1 April 2008, the Workmen's Compensation Act will continue to apply.

Unlike the Workmen's Compensation Act which covers only manual workers and non-manual workers earning $1,600 per month or less, WICA covers all employees whether they are manual or non-manual workers and regardless of their level of earnings.

What is the Purpose of WICA?

WICA aims to provide a quick and simplified process for obtaining compensation for workplace injuries that is an alternative to claiming for damages under the common law.

Unlike civil lawsuits against the employer, compensation is payable under WICA on a 'no-fault basis', as long as an employee suffers an injury arising out of and in the course of his employment. There is also a fixed formula in the Act on the amount of compensation to be awarded, and capped so that the financial liability on the employer is limited.

Who Can Claim Compensation under WICA?

Employees who sustain injuries or who contract occupational diseases arising out of their work, or the estates of employees who die in a work-related accident, are entitled to claim work injury compensation. WICA covers all employees engaged under a contract of service or apprenticeship, regardless of their salary.

Notable Exceptions - Self-employed persons, independent contractors, domestic workers, members of the Singapore Armed Forces, officers of the Singapore Police Force, the Singapore Civil Defence Force, the Central Narcotics Bureau and the Singapore Prison Service are not covered by WICA.

What is Covered under WICA?

An injured employee can make a claim under WICA for personal injury by accident arising out of and in the course of his employment - i.e. arising during working hours or while on official duties; including accidents that happen while travelling to and from his place of work in company provided transport (not by public transport); and injuries sustained abroad while on overseas assignments.

What are the Compensation Benefits under WICA?

Subject to the maximum amounts prescribed by WICA, an injured employee or, as the case may be; the estate of an employee who dies in a work-related accident is entitled to claim -

- medical expenses, including medical consultation, hospitalisation, treatment and surgery, artificial limbs and surgical appliances;
- compensation for Permanent Incapacity or Death; and /or
- wages while on medical leave where applicable[27]

[27] The law society of Singapore.com

CONCLUSION

Courts and scholars have been grappling with the question of ‘who is a workmen’ for centuries. The addition of a new intermediate category has the potential of making the distinction easier. It also has the potential of preventing or at least minimizing, the widespread avoidance of responsibilities by employers, which so far has been authorized by the judiciary. For both advantages to materialize, the term ‘employee’ and ‘workmen’ must be interpreted positively to achieve the goals behind the regulations in which they are found. These purposes may be best served if courts and tribunals maintain a distinction between two basic vulnerabilities suffered by people who work for others. Therefore dependency itself should be used to identify ‘workers’ and trigger the application of protective labour laws.

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