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## Steps that Corporates can take to Avoid Regularization Claims from Contractual Employees

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### INTRODUCTION

In a country like India where population is above 1.3 Billion government provides employment to a huge chunk of people on a contractual basis so that most of the people in the nation are employed and are able to earn some money in order to fulfil their needs and desires.

But, a significant amount of corporate organization be it public/private undertaking have been facing a problem of hike in the number of claims for their workmen who were hired on a contractual basis, in order to regularise their contract and give them all the employment benefits that the corporate organization gives to their regular employees such as bonus, pension, provident fund, insurance benefits and etc.

This has been an alarming situation for all the body corporates around the nation and they are willing to take some steps that can prevent them from entertaining such claims. The legal aspect governing the rights and duties of contract labours and the employer are being elaborated in the *Contract Labour (Regulation and Abolition Act), 1970*. The main aim of this Act is to make sure that contractual workmen/employees are not exploited by the principal employer or by the contractor. Therefore we can say that it is an Act which was being enacted for maintaining the principle of social equity.

One of the Landmark Case decided by Apex Court regarding the Regularization of Contractual Employment are as follows-:

### **BHARAT HEAVY ELECTRICALS LIMITED VS. MAHENDRA PRASAD JAKHMOLA & OTHERS**

In this case Honourable Supreme Court of India laid down some basic test that can be used to analyse whether the contractual employees/workmen are entitled for regularization of the employment or not. Bharat Heavy Electricals Limited entered into a contract with a contractor in order to hire some labours on a contractual basis for their factory unit situated in Haridwar, Uttarakhand. As per the terms of contract when the time limit of the contract elapsed of some labourers, BHEL terminated their employment as it was mentioned in the contract that the employment will get terminated when the time limit of the contract comes to an end.

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Result of which the terminated workmen approached the labour tribunal in order to get back their jobs and to regularise their employment. The labour tribunal stated that the executives of BHEL had an authorised control over the supervision of the workers and they also had administrative control over the workers which clearly shows that despite being contractual workmen, still there was an employer-employee relationship between BHEL and the workmen. Aggrieved from the order of the labour court BHEL appealed in the High Court of Uttarakhand, the Honourable High Court upheld the decision of labour tribunal stating the same Ratio Decidendi as the labour tribunal stated in its judgement. BHEL then filed an appeal in front of the Honourable Supreme Court in order to quash the order of the labour tribunal and the High court. The Supreme Court in their order relied on the judgement passed in the case of *Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another*<sup>2</sup>, in which the Supreme Court laid down two principles through which it can be analysed that the contractual employees/workmen are entitled for regularization of employment or not namely:-

- A. Whether the salary is being paid by the principal employer instead of the contractor?
- B. Whether the principal employer controls and supervises the contractual employee/workmen as if they are the employees/workmen of his/her organization?

#### **THE APEX COURT RELIED UPON THE PRINCIPLES OF CONTROL & SUPERVISION**

In order to critically analyse this principle Supreme Court referred to another past judgement that is *International Airport Authority of India v. International Air Cargo Workers Union* where the court held the following:-

If the primary contract is to supply labours by the contractor in order for completion of a job and under such circumstances the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, but this does not mean that it would lead to the establishment of employer-employee relationship between the principal employer and contractual employee/workmen. But, the pre-conditions are that the salary is being paid by the contractor to his workmen/employee, the right to regulate the employment lies with the contractor and the ultimate supervision of the work done by the employee/workmen is also with the contractor. The principal employer in this case decides that what work is to be given to the contractual employee/workmen. But, it is ultimately the contractor who decides whether to allot/assign an employee/workmen to the principal employer for the said job. Therefore, from the above mentioned point we can draw an inference that it is the contractor who decides that whether an employee/workman is fit for the particular

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<sup>2</sup> (2011) 1 SCC 635

job and subject to what conditions the work will be done by the employee/workman. The contractual employee/workmen works according to the work assigned to him and instruction bestowed upon him by the principal employer once he is being assigned to a principal employer, but the primary control is still in the hand of the contractor and the principal employer has a secondary control over such employees/workmen. Coming back to the matter of BHEL, in the current case the salary was being paid to the workmen by the contractor himself, further when the Supreme Court put BHEL through second test then it was found that BHEL was not using its secondary control authority to its full extent, hence the Supreme Court gave the judgement in the favour of BHEL and negated the claims of workmen.

#### **STEPS THAT CORPORATE CAN TAKE TO AVOID SUCH SITUATION-:**

1. The primary thing that all the corporates must do is prepare a contract which clearly states the terms and conditions of the employment and duly signed by both the parties.
2. Such claims have risen in many corporates which work in the field of industrial, manufacturing and IT where mostly workmen and employees are hired on a contractual basis, therefore it becomes crucial for the principal employer to follow the principal of two tests that is control and supervision are being followed in the organization, so that such claims do not arise.
3. Further, the contract should elaborate the rights and obligations of the principal employer and the contractor, such as shall pay the contractual labourers/employees. All steps should be taken to ensure that the primary supervision and control over the contractual labourers/employees lies with the contractor.

#### **CONCLUSION**

From the above analysis we can clearly state that corporates should be vigilant enough while drafting the terms of the contracts and during the orientation process of the employees while joining the particular corporate, the terms & conditions of the employment contract must be elaborated to the said employees, so that such disputes do not arise in the future when the employment tenure comes to an end. Most of the disputes arise from the side of the blue collar workers who are employed on contractual basis and the contractor signs the employment contract on behalf of all the contractual employees, in such situation the it is the duty of the corporate and the contractor to convey the terms and conditions of the employment to the employees as they are not aware of it which further results in legal dispute between the contractual employees and the principal employer and also leads to wastage of time and money of the contractual employees, contractor and principal employer as well. Therefore, from the

view point of legal compliance such steps must be taken as they are the need of the hour, for this purpose the corporates must have a robust in house legal team or they can even hire the services of practicing lawyers/law firms which will advise them on this issue to avoid such disputes.

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