

D-1
170

I. Contract Labour (Regulation and abolition) Act, 1970

Who is a workman

Those persons who are employed for doing any skilled semi-skilled or un-skilled manual, supervisory, technical or clerical for work for hire and reward. Thus the construction workers are broadly covered by the definition of workman.

Whether the Act applied to construction workers

The Act Applies:-

1. To those contractors who employed 20 or more workmen.
2. Establishments in which 20 or more workman are employed; and
3. If work is performed for more than 120 days continuously in the previous year.

Thus the Act applies only to those construction workers who are employed either with a contractor or establishment employing more than 20 workmen provided they have worked for 120 days continuously during the previous year.

Entitlements of workers under the Acts:

1. Canteens
2. Rest Rooms
3. Sufficient supply of drinking water
4. Latrines and Urinals
5. Washing facilities
6. First aid facilities
7. Employment card
8. Service Certificate
9. Creches

In case of failure of the contractor in providing the above facilities within seven days of the commencement of the employment, the principal employer shall be liable to provide the same to the workers within the next seven days. This in a principle imposes an

obligation on the principal employer to supervise the provision of these facilities and to provide for the same in case of failure. Similarly the principal employer has an obligation for payment of wages.

Enforcement machinery:

1. Inspectors appointed by the Government under the Act.
2. Registering and licensing officers appointed by the Government.

Difficulties in enforcement of Act in relation to Construction Workers:-

Though the Act applies to big establishments and contractors it leaves out the smaller establishments and contractors. A sizeable part of construction activities is however, carried out through petty contractors. The place of work keeps on changing. Thus it also becomes doubtful whether the construction work is of perennial nature or of intermittent or casual nature.

In case of violations of the Act, the complaint has to be made to the inspectors appointed by the Government in the absence of which no court can take cognizance of the same. But they are very few labour Inspectors and their jurisdiction includes a large number of industries. It is virtually impossible for poorly paid illiterate labourers who have no security of employment to complain of violations of the Act. Moreover, prosecution as a method of implementation of the Act has proved a failure.

172

II. The Employees State Insurance Act, 1948

Whether the Act applies to construction workers?

The act applies only to all factories and similar establishments (including factories belonging to the Government. Other than seasonal factories. As only a few construction activities e.g. painting, carpentering etc. are carried out in a factory, the Act applies only to a limited number of categories of construction workers such painters, carpenters who are employed in the factories Entitlements of workers under the Act:-

1. Medical benefit: Free medical aid to worker and the family and dispensaries at ESI hospitals.
2. Sickness benefit: Payment of half wage for the period of sickness.
3. Maternity benefit: Payment of wages for three months.
4. Disablement benefit: Wages for the period of disablement.
5. Dependents benefit: In case of fatal accidents widow and minor children will get benefit.

Enforcement machinery:

The Employees Insurance Court constituted by the State Government shall decide all the disputes and the jurisdiction of the civil court is barred under the Act.

Difficulties in enforcement of the act in relation to the construction workers:-

The act does not cover a majority of the categories

of the Construction workers. Since there is no constant employer-employee relations, there is no way by which the employer can collect the worker's contribution and add his contribution and pass it on to the Scheme which normally operates with contribution from worker, employer, State Government and Central Government.

179

III. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

1. Who is a worker:- Any person who is employed for doing any skilled, semi-skilled or un-skilled manual, supervisor technical or clerical work for hire or reward. Thus the construction workers are broadly covered by the definition of worker.

2. Whether the Act applies to Construction workers: The Act applies only to those who are 'inter-state migrant workmen under the Act is any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State. The act does not apply to those inter-state migrant construction workers who are directly hired by the building owners such as, whitewashers painters, carpenters etc.

Entitlement of workers under the Act:-

1. Pass book affixed by a passport size photograph of the worker and carrying the details of his employment.
2. Fare for the return journey back to his state.
3. Minimum wages
4. Displacement allowance
5. Journey allowance
6. Regular payment of wages in cash
7. Equal pay for equal work irrespective of sex.
8. Suitable conditions of work having regard to the fact that they are required to work in a state different from their own state
9. Suitable residential accommodation
10. Medical facilities

11. Protective clothing
12. In case of accidents and serious injury, information to the next of kin of the workmen.
13. If any of the allowances, facilities or wages are not paid by the contractors, the principal employer is liable to provide the same.

Enforcement machinery:

1. Inspectors appointed by the Government under the Act
2. Registering Officers
3. Licensing Officers

Difficulties in enforcement of Act in relation to the construction workers:

Firstly, inter-state migrant workers who are engaged in construction activities are mostly illiterate people and forced to migrate to other States, in circumstances of unemployment, drought or flood in their states. In the absence of any educational agency to educate them regarding their various entitlements under this Act, they are left ignorant. Secondly there are workers who themselves migrate to other states and there they are picked up by contractors or the building owners themselves. Insecurity of employment is their lot also. Therefore organisation or unionisation is difficult.

IV. Maternity Benefit Act 1961

Whether the Act applies to construction workers:

This Act applies only to factories, mines, plantations and to those establishments wherein persons are employed for exhibition of equestrian, acrobatic and other performances. As no substantial construction activities are carried out in these establishments, the Act does not apply to construction workers. At the most the Act can apply to those construction workers who are employed for the maintenance of the buildings of these establishments. Thus women construction workers are not entitled to the benefits under the Act, such as paid leave before and after delivery, breaks for breast feeding during the workday etc.

V. The Equal Remuneration Act, 1976

Whether the Act applies to construction workers:

The Act has been applicable to construction workers since 2.10.1977.

Entitlements of workers under the Act:

- a) Equal remuneration to men and women workers for same work or work of similar nature.
- b) No discrimination against women while recruiting workers.

Enforcement Machinery

On contravention of the entitlement of any worker

- a) the worker has to take a complaint to the labour officer or
- b) the worker has to make a complaint to the Inspector appointed by the Government under the Act.

Difficulties in Enforcement:

Same as with contract Labour Act.

VI. The Minimum Wages Act, 1948

Whether the Act applies to construction workers:

The act applie to construction workers who are engaged in the Construction & Maintenance of roads or in building operations in stone breaking or stone crushing. All these activities are listed in the schedule appended to the Act.

Entitlements of Workers under the Act:

- a) minimum wages fixed by the Government.
- b) fixed number of hours of work in relation to minimum wages.
- c) a day of rest in every period of seven days.
- d) payment for work on a day of rest at a rate not less than the overtime rate.
- e) payment for every hour or for part of an hour worked in excess of fixed number of other hours of work at a fixed overtime rate.
- f) wage slip to be issued. The employer has to maintain a muster roll and wage register.

Enforcement machinery:

- a) Inspector appointed by the Government under the Act.
- b) Labour Commissioner or other authority appointed under Section 20.
- c) The Civil Court will not take cognizance of any complaint unless an application has been presented to the labour Commissioner or other authority appointed.

Difficulties in Enforcemat:

Similar to those with the contract labour act.

VII. The Workmen's Compensation Act, 1923.

Who is a workman? Any person who is employed in any such capacity as is specified in schedule II includes persons employed in the construction, maintenance, repair or demolition of - (a) any building, (b) any dam or embankment (c) any road, bridge, tunnel or canal, (d) any wharf, quay, sea wall or other marine work including any moorings of ships. Thus the construction workers are covered by the definition of workmen under the Act.

Whether the Act applies to construction workers?

The Act applies to the Construction workers and they are entitled to benefits under it.

Entitlements of workers under the Act:

The worker is entitled to compensation in case of personal injury caused during the course of his employment or in case he contracts any disease specified in an occupation or disease peculiar to that employment.

Enforcement machinery:

- a) The notice of accident or an injury to the workman has to be served on the employer or person responsible to the employer, by delivering it at or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served.
- b) If the employer offers to have the workmen examined free of charge by a qualified medical practitioner, the worker shall submit himself for such examination.
- c) The Commissioner appointed by the State Government for the area in which the accident took place, shall have

the cognizance of any claim under the Act. The Jurisdiction of the Civil Court is barred under the Act.

Difficulties in enforcement of the Act:

The main difficulty in enforcement of this Act in relation to construction workers is that employment records are never maintained. Thus when it comes to providing evidence of accident and fixing liability, they are found absent and the employer gets acquitted. Secondly co-workers due to job insecurity do not come forward for giving evidence and thus again the interest of the worker is jeopardised it takes long time for compensation as the procedure for notice, Court etc. has to be gone through. It is significant that no ex-gratia compensation is stipulated. Thus in effect the construction workers received little benefit under the Act.

The Commissioner on receiving information of death of a worker as a result of accident arising out of and in the course of employment, may give notice to the employer to submit, within thirty days of service of notice, a statement giving the details of the circumstances in which the death of the worker occurred and indicating whether in his opinion he is or is not liable to deposit compensation on account of the death.
