

UNIT – IV

ENGAGEMENT OF LABOUR AND LABOUR & OTHER CONSTRUCTION-RELATED LAWS

INTRODUCTION

The Building and Other Construction Workers Related Laws (Amendment) Bill, 2013 was introduced in the Rajya Sabha by the Minister of Labour and Employment on March 18, 2013. The Bill has been referred to the Standing Committee on Labour for examination and report within three months.

The Bill amends two laws i.e. the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (RECS Act) and the Building and Other Construction Workers' Welfare Cess Act, 1996 (WC Act).

The RECS Act regulates the employment, service conditions, health, safety and welfare measures of building and other construction workers.

The WC Act provides for the levy and collection of a cess on the employer, at the rate of one to two percent of the cost of construction incurred by him. The cess collecting authority (local authority or state government) deducts upto one percent of the amount collected towards the cost of collecting such cess. The cess is paid to the Building and Construction Workers' Welfare Board constituted under RECS Act.

The RECS Act is being amended to remove the upper limit of Rs 10 lakh as the total cost of construction. The Bill allows the central government to notify the maximum cost of construction.

Under the RECS Act, every building worker between the ages of 18 to 60 years who engaged in any building or construction work for at least 90 days (during the past one year) is eligible to register as a beneficiary. The amendments remove the: (i) 90 day requirement for registration of workers and, (ii) the upper age limit of 60 years.

Till the state governments constitute their State Welfare Boards, the amendments provide for the constitution of a Board that will perform such functions. The Board will consist of a chairperson, i.e. Secretary of the Department of Labour, and Secretaries of the Department of Finance, Planning and Social Welfare as members.

As per the RECS Act, the Welfare Board can incur expenses for salaries, allowances and other administrative requirements upto five per cent of its total expenses during that financial year. The amendment removes this limit and allows the central government to notify the percentage.

The amendments in the RECS Act allow the central government to appoint and coordinate with Director Generals (not exceeding 10) in laying down the standards of inspection and they shall exercise powers of an inspector in the respective area.

The WC Act is amended to prescribe a time limit of 30 days for cess collecting authorities to deposit cess to the Welfare Board.

The Bill allows state governments to file complaints for contravention of provisions of the Act.

Role of labour in civil engineering:

Civil engineering labourers perform routine tasks in connection with the building and maintenance of roads, railways, dams and other civil engineering projects.

Main Tasks include -

- (a) digging and filling holes and trenches using hand held tools
- (b) shovelling and spreading gravel and related materials
- (c) trimming and cutting rocks and concrete and bitumen surfaces using jack-hammers

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- (d) loading and unloading construction materials, excavated material and equipment and transporting them around construction sites using wheelbarrows and hand trucks
- (e) cleaning worksites and removing obstructions.

Examples of the occupations classified here:

- 1) Construction labourer (civil engineering)
- 2) Maintenance labourer (dams)
- 3) Earth moving labourer

Methods of engaging labour- on rolls

Engaging Contract Labour In India – Risk And Mitigation Measures

- 1) Legal risks for principal employers
- 2) Misclassification
- 3) Statutory non-compliances by the contractor
- 4) Mitigation measures
- 5) Limiting control
- 6) Contractor due diligence
- 7) Robust services agreement
- 8) Monitor compliance

Labour sub-contract

a contract between a party to an original contract and a third party

Labour - only subcontracting, or lump labour, was a type of employment system where by a Contractor would hire, on a labour-only basis, a subcontractor, which was often an individual Worker or a collection of individuals, and pay a lump sum for an agreed amount of work.

piece rate work

Piece rate pay occurs when workers are paid by the unit performed (e.g. the number of tee shirts or bricks produced) instead of being paid on the basis of time spent on the job. Piece rates are frequently used in certain industries or occupations where the work is repetitive in nature, and where employees have a high level of control over the results. Examples include such tasks as plucking tea, pruning fruit trees, sorting second-hand books, producing garments, or kilometers driven. Home based workers and other out-workers (who work in premises other than that of the employer) are also frequently paid piece rates.

Industrial Disputes Act, 1947

Regardless of the level of economic development, policies governing dispute resolution form an essential part of the labour law framework in any nation. This is due to the fact that complaints and conflicts are inevitable in any working relationship, and the object of policy is aimed at providing mechanisms that address these disputes effectively and expeditiously. In recent times the use of voluntary mechanisms such as arbitration, conciliation, and mediation has become central to dispute resolution policy. This is because they lack the adversarial element that ordinary litigation proceedings are characterized by and thus, have been effective in maintaining relationships during the process of dispute resolution.

The Industrial Disputes Act, 1947 is the primary legislation governing disputes resolution in India. It was enacted to provide for the investigation and settlement of industrial disputes, to prevent illegal strikes and lock outs, to provide relief to workmen during lay-off or after retrenchment or wrongful dismissal. It also provides for the mechanisms of conciliation, arbitration, and adjudication to promote measures for mutually beneficially relations between employers and employees.

Collective bargaining

Collective bargaining is the process of negotiating the employment terms between an employer and a group of workers.

Collective bargaining is the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment,

including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family, and more. Collective bargaining is a way to solve workplace problems. It is also the best means for raising wages in America.

Indeed, through collective bargaining, working people in unions have higher wages, better benefits and safer workplaces.

Industrial Employment (Standing Orders) Act, 1946

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification.

This Act is to require employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. And the Central Government is the appropriate Government in respect of establishments under the control of Central Government or a Railway Administration or in a major port, mine or oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy. CLCs(C) have been declared Appellate Authorities under the Act.

Workmen's Compensation Act, 1923

The Workmen's Compensation Act, 1923 was made to offer compensation to the workers who have encountered injuries due to an accident during their employment.

This act ensures that rights of the labourers are maintained even after they encounter some disability or death due to an accident during their work.

Building & Other – Construction Workers (regulation of employment and conditions of service) Act (1996) and Rules (1998)

An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare and other construction workers and to provide for their safety, health and welfare measures and for other matters connected there with or incidental there to. Be it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

CHAPTER PRELIMINARY 1. Short title, extent, commencement and application.-

(1) This Act may be called the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 1st day of March, 1996.

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work.

Explanation.- For the purpose of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

Definitions-(1) In this Act, unless the context otherwise requires,-(a) "appropriate Government" means,-(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government ;(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government;

Explanation.- For the purpose of sub-clause(ii), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) which is owned, controlled or managed by the Central Government;(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;(b) "beneficiary" means a building worker registered under section 12;(c) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section(1) of section

18;(d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or ,in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works,flood control works (including storm water drainage works),

2. Definitions.—(1) In this Act, unless the context otherwise requires,— (a) "appropriate Government" means,— (i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government; (ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government; Explanation.—For the purposes of sub-clause (ii), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) which is owned, controlled or managed by the Central Government; (iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate; (b) "beneficiary" means a building worker registered under section 12; (c) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of section 18; (d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply; (e) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person— (i) who is employed mainly in a managerial or administrative capacity; or (ii) 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; (f) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42; (g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor; (h) "Director-General" means the Director-General of Inspection appointed under sub-section (1) of section 42; (i) "employer", in relation to an establishment, means the owner thereof, and includes,— (i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department; (ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment; (iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor; (j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs.