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CONTENTS

- Supervisor / Supervision
- CPI Numbers
- Contract labourers are not entitled to claim bonus from the principal employer – Karnataka- H C
- Returns to be sent

Supervisor / Supervision

(Continued from previous issue.....)

The following distinguishing features of a supervisor as stated by the Supreme Court in various cases may be kept in mind to clarify a supervisor as a real supervisor qualifying for the exemptions under definition of exemptions of a workman 2(s)

1. Power conferred to take decision independently and company bound by his decision.
2. Distribution of work to subordinate employees.
3. Checking the work distribution or keeping on eye by supervision/ overseeing.
4. Power of assigning duties and distribution of work or a different grade.
5. Discharge functions mainly supervision in respect of employees who are working under him.
6. Person being in-charge of departments/sections. Special allowance paid for doing supervisor work or a different grade.
7. Main or substantial work should be supervisory, though incidentally do other work also.

“Definition of a spouse someone who’ll stand by you through all the trouble, you would’nt have had if you’d stayed single.”

8. One who could bind the company on decisions on behalf of the company
9. One having authority over others to superintend and direct.
10. Any individual having authority in the interest of employer, to hire , transfer, suspend, lay off, recall, promote, discharge, assign reward or discipline other employees or responsibility to direct them or to adjudicate on their grievances, or effectively to recommend such action if, in connection with the forgoing the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

If most of the above are present in the nature of work of the supervisor/ foreman/ manager and if he is drawing a monthly salary of more than 6500/- then he is not a worker within the meaning of section 2(s) of the Industrial Dispute Act 1947.

Many companies are liberal in designating senior workers as supervisors, without entrusting them with concomitant responsibilities, as sated above. Such supervisors are only supervisor by name and in the eye of law are no more than workers.

In a mass production unit where, like in a sheet metal fabrication or machine shop, where engineered products are mass produced by employing operators who perform at most only semiskilled jobs, which are repetitive and monotonous, then supervising such group of workers would require in the ratio of 1 supervisor for 15 such workers.

A supervisor is the last managerial personnel who represents the workers to the management and who represents the management to the workers.

He also is a guide to the workers under him not necessarily only in respect of work, but in respect of the worker's social needs, that is, his work environment in the factory, his health, his safety, the individual workers likes and dislikes, preferences in his way of life, his hobbies, his short comings, the workers family details, his married life, his children, his obligations, his responsibilities. These are necessary for the supervisor to understand his work fully, so that he represents the workers to the management in full.

One of the main jobs of the supervisor is to rate the works below him, in respect of their work performance, efficiency, knowledge, attendance, behaviour etc; which is used by management to determine the workers increment, promotion, usefulness or otherwise.

Therefore it is seen that a supervisor is an important cog in the wheel of the management. This is the reason that a number of courses are available for training supervisors or supervisory training programmes.

CONSUMER PRICE INDEX NUMBER

The Consumer Price Number for the working class of Bangalore Centre, Simla Series (Base Year 1960 = 100) for **April 2013 = 6024 Points.**

BANGALORE EMPLOYERS ASSOCIATION BULLETIN

CONTRACT LABOURERS ARE NOT ENTITLED TO CLAIM BONUS FROM THE PRINCIPAL EMPLOYER – KARNATAKA HIGH COURT

The officials of the Labour Department conducted inspection of the records of Hindustan Unilever Limited, Mangalore and found that the company was not paying bonus to the contract labourers on par with regular employees. Therefore, notice came to be issued to the company for making payment of bonus to the contract labourers. The company sent reply stating that contract labourers are not employees as defined under the Payment of Bonus Act, hence are not entitled for bonus from the principal employer on par with regular employees. The labour authorities being not satisfied with the reply lodged a complaint before the Judicial Magistrate First Class, Mangalore in CC No. 1675/2013 alleging that the company has committed violation of the provisions of Payment of Bonus Act and they are guilty of the offence punishable under Sec. 28 of the Payment of Bonus Act.

The criminal court took cognizance of the offence and issued notice to the Factory Manager and Unit HR Head of Hindustan Unilever Limited. The management challenged the criminal prosecution before the Hon'ble High Court of Karnataka by filing Criminal Petition under Sec. 482 of the Criminal Procedure Code. It was contended by the company that Sec.2(13) of the Payment of Bonus Act defining employees do not cover the contract labourers, whereas the ESI Act and EPF & MP Act has specifically includes contract labourers also.

It was also contended that Kerala High Court in the case of Cominco Binani Zinc Ltds., vs. Pappachan reported in 1989(1) LLJ 452 in respect of contract employees has held that there cannot be employer employee relationship between the management and the contract labourers.

Similarly it was noticed that the Hon'ble Supreme Court in the case of workmen of FCI vs. FCI reported in 1985(2) LLJ 4 considering the relationship of contract labourers with FCI has held that contract workmen are not workmen of the principal employer and no claim can be made by the union against the principal employer on behalf of contract laborers.

The Hon'ble High Court further noticed that contractor had paid minimum bonus of 8.33% to the contract labourers. The Hon'ble Karnataka High Court did not accept the contention of the labour department that the contract labourers are also entitled for payment of bonus on par with regular employees. The Hon'ble High Court of Karnataka held that there is no obligation on the part of principal employer to pay bonus to the contract employees on par with regular employees. Therefore, it does not constitute any violation as contemplated under Sec. 11 of the Payment of Bonus Act punishable under Sec. 28 of the Payment of Bonus Act. Accordingly, the criminal prosecution launched was held to be without authority of law and abuse of process of court. Therefore, the Hon'ble High Court quashed the criminal prosecution launched against the company.

This judgment is reported in **2013 LLR 595** in the case of **Mr. Shachindra Kumar, Factory Manager, Hindustan Unilever Ltd., vs. State of Karnataka, Department of Labour.**

The judgment is delivered by Hon'ble **Mr. Justice K.N. Keshavanarayana.**

- **SOMASHEKAR**
Advocate
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RETURNS TO BE SENT

1. The Factories Act:

Employers registered under the Factories Act, 1948 are once again reminded that as per the Karnataka Factories Rules, the half – yearly return in **Form - 21 in duplicate**, for the half – year ended on **30th June 2013**, should reach the Sr. Assistant Director of Factories of the concerned division, on or **before 15th July 2013**. Employers are advised to ensure that the returns are submitted within the stipulated time. However the last date for submission of these returns for factories situated in Tamil Nadu, as per the Tamil Nadu Factories Rules is **31st July 2013**.

2. The Employment Exchange (CNV) Act:

The quarterly returns in **Form ER – 1** under the Employment Exchange (CNV) Act for the quarter ending 30th June 2013, should reach the Local Employment Exchange, on or before **30th July 2013**.

3. The Contract Labour (Regulation & Abolition) Act:

Contractors employing Contract Labour, duly licensed as per the requirement and provisions under this Act, are required to send the **Half-yearly returns** for the period ending 30th June 2013 in **Form XXIV** in duplicate to the concerned Licensing officer in the Department of Labour on or before **30th July 2013**. All employers who have engaged contractors are required to ensure satisfactory compliance of the same in respect of the contract workers engaged for their work.

The Tamil Nadu Industrial, Establishment (Conferment of Permanent Status of Workmen) Act:

Employers of establishments located in Tamilnadu are hereby informed that the Half – yearly returns in Form – 2 under this Act for the half – year ending on June 2013 should reach the concerned inspector on or before 15th July 2013 along with a copy of the up-to-date (as on 30/06/2013) list complied in **Form – I** under the Act.

The Tamil Nadu Payment of Subsistence Allowance Act:

Employers of establishments may please note that the half – yearly return under this Act, for the period ending **30th June 2013** should reach the concerned Deputy Commissioner of Labour, in **Form – 2 before 15th July 2013**.

(Both these Acts are applicable only to establishments in Tamil Nadu)