WHAT EVERYBODY MUST KNOW ABOUT THE ENGAGEMENT OF FIXED-TERM EMPLOYEES

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Engagement of employees on a Fixed-Term basis is not a new phenomenon and has been continuing since time immemorial. What remained static was the employers' perception about how the conditions of persons employed on a Fixed-Term were to be treated. It was a common practise in the industry to offer differential and mostly, prejudicial service conditions to Fixed-Term Employees ("**FTEs**" hereinafter) in comparison to their permanent counterparts. Under the old law, for manufacturing establishments which were covered under the ambit of the Industrial Employment (Standing Orders) Act, 1946 and had the Central Government as their appropriate Government, the Model Standing Orders prescribed that the hours, wages, allowances and other benefits of a fixed term workman shall not be less than that of a Permanent workman. He would also be eligible for all statutory benefits available to a Permanent workman proportionately according to the period of service rendered by him even though his period of his employment does not extend to the qualifying period of employment required in the statute. Similar conditions have been prescribed under Code on Social Security, 2020 ("**CoSS**") [Section 2(34)] and the Industrial Relations Code, 2020 ("**IR Code**")[Section 2(o)] as well. The mandates under the present law are as under:

1. Hours of work, wages, allowances and other benefits of the fixed term employee must not be less than that of a permanent worker doing the same work or work of similar nature

In this regard, it is to be first be determined as to whether an FTE is carrying out same work or work of similar nature. In the context of contract labour vis-à-vis regular employees, the Supreme Court has held that while deciding the question of same or similar kind of work must take into consideration the nature of duties of the staff in the two categories, degree of skill and dimensions of the job[1]. In deciding whether the work is the same or broadly similar, one should take a broad view; next, in ascertaining whether any differences are of practical importance, one should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat the broad outlook. The employer should look at the duties actually performed, not those theoretically possible.[2]

It has been mandated that not only the hours of work and allowances should be equivalent, but other benefits must also be similar. It is a well settled principle of law that any benefit which is being offered for a long period of time and for a continued period, it would become an implied condition of service[3]. Thus, what becomes conspicuous is that if the management has been granting any bonus or any other *ex gratia* amount since a long time or as a custom to its permanent employees, the same will *ipso facto* have to be provided to the FTEs as well. The bottom line is that whatever benefits are being offered to permanent employees, they will also have to be offered to the FTEs, provided that work which is same or of similar nature is being performed. In this regard, with respect to the earlier law, the Gujarat High Court[4] has made the following observations:

> *"11.1 However, the mere fact of long or continued service does not, by itself, create any inherent or vested right to regularization, particularly when it is established that there is no evidence of exploitation, The concerned workmen have not been deprived of any benefits or pay scales available to permanent employees as well as all statutory and service-related benefits including wages, allowances, and working conditions have been extended to fixed term contract (FTC) employees in parity with regular workmen.*
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> *13. In the considered opinion of this Court, the determination of the strength of the labour force falls squarely within the prerogative of the management. The number of workmen*

1. Uttar Pradesh Rajya Vidyut Utpadan Board and Another v. Uttar Pradesh Vidyut Mazdoor Sangh, 2010 AIR SC 221 : 2010 (1) LLJ 589 : 2010 (80) FLR 124 : 2010 (1) LLN 124 (SC).

2. Mackinnon Mackenzie & Co. v. Audrey D'Costa and Another, (1987) 2 SCC 469.

3. State Bank of India Staff Union and Others v. State Bank of India, Madras, 1984 (1) LLJ 306 (Mad. HC).

4. TBEA Energy India Pvt. Ltd. v. Gujarat Engineering and General Kamdar Union, 2026 LLR 24 (Guj. HC).

required to efficiently carry out operations in an industrial undertaking must be left to the discretion of the employer, as part of his inherent managerial rights to organize and conduct business in the manner deemed most suitable. Provided that such managerial decisions are taken in good faith and are not tainted by mala fides or unfair labour practices."

2. Eligibility for proportionate benefits

An FTE, as per proviso (b), is eligible for all statutory benefits available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute. It must be noted that this stipulation is only inclusive of statutory benefits and not non-statutory or contractual benefits. Thus, if one were to take an example of annual leaves available to workers under the Occupational Safety, Health and Working Conditions Code, 2020, if the fixed term contract of a person is poised such that 180 days in a calendar year cannot be completed, he will have to provided leaves on a *pro rata* basis and consequential encashment as well. This will extend to other statutory benefits as well, such bonus and maternity benefits, which prescribe an eligibility threshold of 30 days and 80 days respectively.

3. Payment of Gratuity

The Central rules under the CoSS specify that an employee on FTEs will be eligible for gratuity, if he renders service under the contract for a period of at least one year and for subsequent period in excess of six months and more, but less than one year, shall be rounded off to one additional year. The draft Rules of the States do not seem contain such a rider. However, the bare text of the CoSS, under Section 53 states that gratuity for fixed term employees will have to be paid on a *pro rata* basis. No qualification period of one year is provided therein. The IR Code further states that an FTE would be eligible for gratuity if he renders service under the contract for a period of one year. Even though there is a conflict to some degree, it would be appropriate to read both the laws harmoniously. The *pro rata* payment related provisions should only kick in once the FTE has rendered a service on year. This interpretation is further accentuated by the clarification given by the Central Government under its draft rules.

4. Regularisation and Termination of FTEs in Private Employment

(a) Regularisation of fixed term employees in private establishments

The Hon'ble Supreme Court of India, in the recent judgment of ***Jaggo v. Union of India & Ors***.[5], heavily came down upon the Government departments for engaging workers on a temporary basis for extended periods for decades, especially when their roles are integral to the organization's functioning; denying such workers benefits of regularization; and arbitrary termination of their services without any prior notice or explanation.

While the said judgment was dealing with public employment, the Supreme Court expressed is concerns on the current state of affairs in private employment as well - highlighting how temporary/ fixed term and gig workers often fall prey to "precarious employment conditions, often characterized by lack of benefits, job security, and fair treatment". The Court also asked Government departments to lead by example and set positive precedents for the private sector to follow, underscoring the importance of fair employment practices, job security and principles of justice and fairness.

Much has been talked about regularization and retention of fixed term/temporary employees in public employment - across media and other forums - but not so much vis-à-vis private employment. However, the law with respect to private establishments has been laid down by the Supreme Court and various High Courts umpteenth number of times and is now well settled.

The issue of regularization of temporary employees in government services gained momentum after the landmark judgment of ***Secretary, State of Karnataka v. Uma Devi***[6], which sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, the law with respect to private employment is a bit different.

Item 10 of the Second Schedule of the IR Code read with section 2(zo) characterizes employment of workmen as "*badlis*", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen as an unfair labour practice. Section 84 of the IR Code prohibits employers from engaging in unfair labour practices and section 86 of the IR Code prescribes the punishment for engaging in unfair labour practices. Section 87 of the IR Code allows only a Metropolitan Magistrate or

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5. Jaggo v. Union of India & Ors., Arising out of SLP(C) No.5580/2024 dated 20.12.2024 (SC).

6. Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1.

a Judicial Magistrate of the first class to deal with the offences punishable under the IR Code.

In the judgment of ***Gangadhar Pillai v. M/s. Siemens Ltd.***[7], it was averred by the petitioner workman that he had been working with the respondent management for many years on a temporary basis and that his services were extended intermittently by giving artificial breaks. He claimed that he had completed 240 days of service with the respondent-management and would thus be entitled to regularization. The Supreme Court negatived his contention and held that only because an employee has been engaged as a casual or temporary employee or that he had been employed for a number of years, the same by itself does not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee. The employer does not have any statutory liability to give permanent status to a worker on completion of a specified period. It also laid emphasis on the fact that by mere completion of 240 days of continuous service in a year, the concerned employee does not become entitled to for regularization of his services and/ or permanent status and the same is only relevant with respect to the provisions pertaining to retrenchment of services.

As with regards to continuous employment of temporary workers being an unfair labour practice, the Court held that there is no provision for prevention of unfair labour practices under it. It is only for the worker to seek remedy under section 34 of the Industrial Disputes Act, 1947 (which corresponds to section 87 of the IR Code) for initiating criminal prosecution against the employer. This has also been held in the judgment of ***Hindustan Unilever Ltd. v. Ashok Vishnu Kate***[8].

(b) Termination of fixed term employees in private establishments

As per section 2(zh)(iv) of the IR Code, termination of the service of the worker as a result of completion of tenure of fixed-term employment is not retrenchment.

It has been held by the Supreme Court that when the appointment is for a fixed period, unless there is finding that the engagement was misused or vitiated by its *mala fide* exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power[9]. Also, where employment was given in a particular scheme such as construction work, their termination with the scheme ending, the employee cannot be said to have a right to be regularized in service or claim benefit of reinstatement since the termination did not amount to retrenchment.[10]

The facts of one case before the Apex Court were such the appellant was working on N.M.R. basis as a Typist with effect from 12.7.1982. He was appointed for a specific period on daily wage basis. On consideration of the representation for further engagement and having regard to the requirement, he was engaged again and again on daily wage basis for specific period. The workman cried foul and averred unfair labour practice. The Supreme Court held that the appointment of the employee was on N.M.R. basis for a fixed period of time on the basis of payment at different rates. Since the engagement was for a fixed period, his termination would not be termed as 'retrenchment'[11]. The Delhi High Court has held that termination of a workman, having worked for more than three years on a project without payment of retrenchment compensation, will not be illegal when he was appointed on a project for a specific period and his employment may or may not be renewed hence such non-renewal of contract of employment did not amount to retrenchment.[12] Also, when payment was made per a fixed rate and there was no regular employment ever offered to any of the employee, the appointment would be specific period and conditional and the termination would fall under the exception. Further, merely because the workman has worked for more than 240 days in a year with the employer on a fixed term basis would not make the termination illegal.[13]

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7. Gangadhar Pillai v. M/S. Siemens Ltd., 2007 LLR (SN) 325 (SC).

8. Hindustan Unilever Ltd. v. Ashok Vishnu Kate, 1995 LLR 953 (SC)

9. State of Rajasthan v. Rameshwar Lal Gahlot, 1996 LLR 482 : 1996 (1) LLJ 888 : 1996 Lab. IC 914 (SC).

10. Executive Engineer, ZP Engg. Div. v. Digambara Rao, 2004 LLR 1134 (SC).

11. Kishore Chandra Samal v. The Divisional Manager, Orissa State Cashew Development Corpn. Ltd., Dhenkanal, 2006 LLR 65 (SC).

12. Surjeet Kumar v. Presiding Officer & Ors., 2007 LLR 504 (Del. HC).

13. West Fort Hospital v. State of Kerala, 2004 LLR 1025 (Ker. HC); Management of Mangalore Chemicals & Fertilizers Ltd. v. Bhujanga & Ors., 2009 LLR 732 (Karn. HC); Mr. Yogeesha T.N. v. Management of M/s. Kennametal India Ltd., 2024 LLR 501 (Karn. HC).