



RESEARCH ARTICLE

A STUDY OF LABOUR LEGISLATIONS REGULATING THE TERMS OF EMPLOYMENT OF SECURITY GUARDS WORKING WITH PRIVATE SECURITY AGENCIES

Babulal Dargad*

JSS Sakri Law College Hubballi, India

ARTICLE INFO

Article History:

Received 19th February, 2022
Received in revised form
20th March, 2022
Accepted 15th April, 2022
Published online 30th May, 2022

Key words:

Ectopic Pregnancy,
Laparotomy, Primi.

*Corresponding Author:
Babulal Dargad

ABSTRACT

Modern labour regulation institutions are among the most active and significant today. A nation's daily life is significantly more affected by these institutions than anything an outside organisation or force could do. In order for labour laws to evolve, there are a number of factors that must be taken into consideration, among them the growing class solidarity among workers and their realisation that the power of collective bargaining is real, the growth of enlightened self-interest among employers as to the importance of an efficient and contented class of workers, and the realisation by the general population in order for labour laws to evolve, This century's labour movement was instrumental in the adoption of labour laws across most of the globe, including in India. After India's independence and the establishment of a democratically elected government, attitudes regarding the needs and interests of the working class in India began to shift. The most important law in the country, the Constitution, enshrines the general principles that underpin the many labour laws. Increased labor-market rules have been implemented in an effort to address the various issues the labour market has created. Private security firms in India employ 8.9 million people and have the potential to hire an additional 3.1 million by the year 2022, making them one of the largest employers in the country. Private security agencies employ a large number of people in spite of the fact that the country lacks proper standards and existing labour welfare and social security legislation and Constitutional Provisions that cannot be stretched far enough to cover the terms of employment and the expected protection for the same.

Copyright©2022, Babulal Dargad. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: Babulal Dargad. 2022. "A study of labour legislations regulating the terms of employment of security guards working with private security agencies". *International Journal of Current Research*, 14, (05), 21482-21486.

INTRODUCTION

The private security services industry is one of the largest employers in India. The sector is involved in skill development and employment of backward, economically weaker sections of our society, particularly from the rural and semi-urban areas of the country. The industry continues to face challenges around low compliance to regulatory norms, competition from small, unorganized players and consequently, margin pressures due to competition and increasing compliance and manpower costs. Manned guarding is the largest segment in the security services industry and pertains to provision of manpower to secure premises and individuals. Relevant activities within manned guarding include surveillance and protection of industrial, commercial and infrastructure facilities goods and people (both static and mobile), security checks, crowd management (e.g., event security) and close protection. The Indian security services industry has grown rapidly in the last decade, given the continuing threat perception from crime and terrorism; demand for security in new infrastructure projects such as airports roads and telecom towers; emergence of modern retail and growing need for security for movement of cash within the

The industry appears to have been relatively less impacted by the current economic slowdown, and is expected to grow at 20% over the next few years.

Terms of Employment of Private Security Guards: Terms of employment are conditions that an employer and employee agree upon for a job. The following are the terms of employment which are normally be extended to the Security Guards working with Private Security Agencies.

- Employment, Termination and dispute resolution
- Wages, Work days, hours, shift working, breaks, leave
- Employment Injury, Health and sickness, Maternity Benefit, retirement benefits.
- Employee's job responsibilities, dress code

Terms of employment are often outlined in a contract of employment. So in case of Security Guards these terms will be mentioned in the Contract for Employment entered into between the Principle Employer and the Contractor. Normally majority of employers require employees to sign an employment agreement or contract that expresses the terms of

employment. In cases where employees are not required to sign an employment contract, the terms of employment are generally determined by state or under a common law, the same is the case with Security Guards.

Existing Labor Legislations Regulating Terms of Employment of Security Guards: The Laws which regulates terms of employment can be studied in different heads, but its very difficult to understand the obligation of employer and contractor in case of security guards' employment. When we refer the contract for employment of Security Guards, most of the statutory compliances are on the contractor but as per existing legislations its on Principal Employer. Lets take a look on those laws which regulates the terms of employment of security guards employed with privte security agencies.

Following are the Existing Labor Legislations which regulates the terms of employments of Security Guards working with Private Security Agencies.

- Contract Labour (Regulation and Abolition) Act,
- Industrial Employment (Standing Orders) Act,
- Minimum Wages Act,
- Employees Compensation Act,
- Employees State Insurance Act,
- Employees Provident Fund and Miscellaneous Provisions Act,
- Payment of Gratuity Act,
- Industrial Disputes Act,
- Payment of Wages Act,
- Factories Act
- Private Security (Regulation of Employment) Act.
- Karnataka Subsistence Allowance Act

Provisions relating to terms of employment under Contract Labour (Regulation and Abolition) Act 1970: The Contract Labor (Regulation and Abolition) Act 1970, section 7 imposes a mandatory obligation on the principal employer to register itself with registering officer if he employs contract labour, and according to section 12 every contractor who execute work through contract workers should obtain license from the licensing officer. Therefore when it comes to employment of security guards, who are basically contract workers, they can only be appointed by licensed contractor in the registered establishments only. Sec. 16 to 19 imposes certain obligation on employer and contractor to provide some benefits to the contract workers as part of the terms of their employment; such as Rest rooms, Drinking water, Latrines and urinals, washing facility. Apart from these, the Act further provides that, payment of wages should be made in presence of and under the supervision of employers representative.

Employment and dispute resolution : Disputes are bound to arose between Employer and Employees or between employee and employee or between employer and employer, these disputes may be for different reasons and terms of employment is a major reason for these disputes. We have sufficient legal means to resolve these disputes by mutual compromise or by adjudication. The following are some means through which the employees can resolve the existed or even apprehended disputes.

The Industrial Disputes Act, 1947:Contract labour will be considered as workmen under Industrial Disputes Act, while

recovering wages due from the Employer u/s 33 (C) (2), he can recover the same through the authorities prescribed under the Act.

Private Security Agencies (Regulation) Act, 2005: This Act imposes certain obligation on employing security guards by the security agencies. u/s 4 of the Act, Private security agency shall not carry out the or commences business without obtaining licence from the authority prescribed under the Act, and provides for training of the security guards. Further prescribes some qualification for employment of security guards. like, he must be a citizen of India, must have attained 18 years but shall be below 65 years, completes security training, some basic physical standards etc.

Laws Regulating payment of Wages and Minimum Wages, Work days, hours, breaks, leave, are as follows Wages :-

Minimum Wages Act 1948: The Minimum Wages Act prescribes minimum wages for all employees in all establishments or working at home in certain employments specified in the schedule of the Act. Central and State Governments revise minimum wages specified in the schedule. The Minimum Wages Act 1948 has classified workers as unskilled, semi-skilled, skilled; and highly skilled. And obligation is imposed on principal employer to pay minimum wages to the contract workers even as prescribed under the Minimum Wages Act. As per this law, its mandatory that every Principal Employer and Contractor is restrained from paying Wages less than the Minimum Wages prescribed under the act. Failure will invite legal action.

Payment of Wages Act 1936

- Under the Payment of Wages Act 1936 the following are the common obligations of the employer:
- Every employer is primarily responsible for payment of wages to employees. The employer should fix the wage period (which may be per day, per week or per month) but in no case it should exceed one month;
- Further under Contract Labour (Regulation and Abolition) imposes obligation on the principal employer to appoint a supervisor for supervising payment of wages at appropriate time by the contractor to the contract workers.

Laws regulating Work days, hours, Shift working, breaks, leave are as follows:-

Factories Act: Applies to Industrial establishments employing 10 or more persons and carrying manufacturing activities with the aid of power and 20 without the aid of power come within the definition of Factory.

Sec. 2(1) of the Act defines workmen as “workmen means a person employed, directly or through any agency (including Contractor) with or without the knowledge of principal employer. Based on the definition we can say that Factories Act does not make any discrimination between persons employed directly or through contractor. Security Guards being contract labours of security agencies are eligible to for the benefits available under Factories Act, such as weekly holidays, compensatory holidays, overtime wages, leave with wages, from the employer. The contract worker availed these benefits only after the amendment of the definition of worker in

section 2(1) in the year 1976 by Factories (Amendment) Act 94, 1976.

- Sec 51: weekly hours: 48 hours,
- Sec. 52: weekly holiday
- Sec. 54: working hours per day should not exceed more than 9 hours including rest and intervals.
- Sec. 57 and 58 Shift working
- Sec. 59: extra wages for over time after 48 hours a week.

Laws regulating Employment Injury, Sickness, Maternity Benefit and Retirement benefits

Employment injuries

Employees Compensation Act 1923: The Workmen's Compensation Act 1923 is one of the earliest pieces of labour legislation. It covers all cases of 'accident arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Workmen's Compensation Act. The Act provides for minimum of rupees 1,20,000/- in case of death and rupees 1,40,000/- in case of permanent total disablement.

Sickness, Maternity

Employees State Insurance Corporation Act, 1948: Sec. 2(9) (iii) of the Act reads as "Employee means any person employed for wages in or in connection with the work of the Factory or Establishment to which this Act applies and, includes whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let or hire has entered into a contract of service. Based on this part of definition the benefits under the said Act have been extended to the security guards. And when it comes to contribution for the ESI funds, it is the duty of Principal Employer and the employee to make required amount of contribution and to get themselves registered with ESI Corporation to avail the benefits. Under this Act, security guards will be getting the benefits like Sickness benefits, maternity benefits, medical assistance for him/her and his/her family (dependents) in the ESI Maintained and Recognized Hospitals. If we expect contractor or to principal employer to pay leave with wages, and to take care of medical needs of their employee at their own cost then it will certainly affect the employment opportunities therefore ESI Act is a kind of insurance scheme which takes care of the things and shoulder the responsibility of employer in meeting out the statutory requirements. Therefore the employees will be getting 75% of his wages from the ESI Corporation subject to the maximum limit of 15,000/-.

Laws relating to Retirement Benefits etc:

Employees Provident Funds and Miscellaneous Provisions Act 1952: Sec. 2 (f), (i) of the Act, Provides the Definition of Employee, as per which "any person employed by or through a contractor in or in connection with the work of establishment is also an Employee". Thus employees engaged through contractor will also get the benefit provided under the

legislation by paying his part of Contribution to the Fund constituted and under sec. 6, liability of employers contribution is on the Principal employer. Prior to the amendment (Ins. By Act 28 of 1963) it was the responsibility of Contractor. The Act provides for three different schemes, one is Provident Fund Scheme, Deposit Linked Insurance Scheme and Pension Scheme. Looking into the needs and payment of subscription of the schemes by the employees, these benefits will be extended to the employees who will be out of employment due to superannuation.

Payment of Gratuity Act, 1972: This Act makes certain industries to which it applies pay one time gratuity all those employees who retired from the services after completing 5 years continuous services. The amount will be 15 days average wage multiplied by the number of years of service put on by the employee.

International commitments on regulation of terms of employment of security guards: When it comes to regulation of terms of employment of security guards, we need to discuss few of the international conventions which are directly or indirectly related to employment of security guards. Few among them are as follows;

Convention concerning Fee-Charging Employment Agencies (Entry into force: 18 Oct 1936) *Fee-charging employment agency* means Employment agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker.

Object: Fee-charging employment agencies conducted with a view to profit shall be abolished within three years from the coming into force of this Convention for the Member concerned. During the period preceding abolition, there shall not be established any new fee-charging employment agency conducted with a view to profit. Fee-charging employment agencies conducted with a view to profit shall be subject to the supervision of the competent authority and shall only charge fees and expenses on a scale approved by the said authority.

Convention concerning Fee-Charging Employment Agencies (Revised 1949) (Entry into force: 18 Jul 1951)

Object: Each Member ratifying this Convention shall indicate in its instrument of ratification for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies, or providing for the regulation of fee-charging employment agencies including agencies conducted with a view to profit. Further, each Member for which the Convention is in force shall maintain or ensure the maintenance of a free public employment service, and Considering that such a service should be available to all categories of workers.

Private Employment Agencies Convention, 1997 (No. 181)

Object: Recognizing the role which private employment agencies may play in a well-functioning labour market, and for Recalling the need to protect workers against abuses. This

Convention applies to all private employment agencies and to all categories of workers and all branches of economic activity. For the purpose of this Convention the term *private employment agency* means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

- services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
- other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services. And legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers. Further impose some restrictions on charging of money from the workers for their employment. A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services take the necessary measures to ensure adequate protection for the workers employed by private employment agencies in relation to, freedom of association, collective bargaining, minimum wages, working time, statutory social security benefits, access to training, occupational safety and health, compensation in case of occupational accidents or diseases, compensation in case of insolvency and protection of workers claims, maternity protection and benefits, and parental protection.

Security Guards remuneration order 1986, by Research, Legislation and labor standard division: Through this order working hours for security guards are fixed maximum for 12 hours including 1 hour meal break and 2 tea break of 10 min

- At least One rest day on a Sunday in a month.
- In case of day night shift, the same should be distributed among all the workers.
- Work on public holiday shall be remunerated
- Wages shall be paid during working hours.
- In case of monthly paid worker not later than the second working day in the following month, if weekly paid not later than the last working day of the week.
- Wages should be paid in accordance with the workers preference. Cash, cheque or through bank.
- Annual leave for 18 days, sick leave 21 days to the workmen who worked continuously for 12 months with the same employer.
- 2 pair of Protective clothing and equipment to be provided free of cost.
- Maternity benefit to women worker

Role of Judiciary: The Judiciary is also contributing a lot for regulating terms of employment of security guards through the matters which are placed before them, following are some landmark decisions;

Deccan Cronicle v/s G Pedda Reddy, (2004) LLR 809, AP H.C: The respondent workman was employed as security guard by the petitioner through Annapurna Security Service, at managing partners residence, the said workmen along with other were demanding for P.F contributions, leave with wages, weekly off and bonus. The said workmen was absent for some time due to illness, on his return to the office he was said that his service was no longer required. He brought an action for reinstatement with back wages before the Labour Court and the Court held it as termination and ordered for reinstatement with back wages, aggrieved by the order one day the respondent security guard claimed reinstatement with back wages for his termination, aggrieved by the order petitioner company preferred an appeal and contended that, respondent was never employed by the company, the company hired the services of Annapurna Security Services and further they have not issued any termination order. Court held that security guard engaged through a security agency surrendered to the security agency cannot claim to be employee of the principal employer and cannot be reinstated.

Hindustan Steel Works Construction Ltd v. The Commissioner of Labour and Ors.(1996) 10 SCC 599: The appellant, Hindustan Steelworks Construction Ltd., is a Government company engaged in the work of construction of various types in India and abroad. And has engaged some security guards for the protection and watching its properties through Respondent No. 4 M/s. Investigation and Security Services India Pvt. Ltd., security agency were paying less to the workers compare to the pay agreed between the company and the contractor. The same has been questioned by the Commissioner of labour and passed an order stating that these workers are workers employed by the for paying difference amount as well as equal payment which was being paid to the regular employees of the principal employer performing same nature of work.

Aggrieved by the order security agency filed a writ petition before the Andhra Pradesh High Court, challenging the: order of the Commissioner of Labour, A learned Single Judge of the High Court by his order dated 6th of July, 1988 dismissed the writ petition and upheld the order of the Commissioner of Labour, Aggrieved by this order, Security agency preferred an appeal before the Division Bench of the High Court, Division bench ordered to pay the amounts retained by the security agency and further gave a direction to the appellant to pay to the contract labour the difference between the wages paid by the contractor and the wages which were paid by the appellant to its own security staff. Being aggrieved by these directions, the appellant company has come by way of the present appeal. The short question that arises for determination is Whether the appellant who is the principal employer is liable to pay to the contract workers any amount which constitutes the difference between the wages payable to the contract labour by the contractor and the wages paid by the appellant to its own employees doing similar work. Court Held that as per Rule 25 of the Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971 imposes on the contractor certain conditions subject to which a licence is granted to him.

One such condition is to the effect that the contractor shall not pay to the contract labour in his employment wages which are lower than the wages paid by the principal employer to his own workers which do the same or similar kind of work. This is a condition of the contractor's licence. There is no provision under these rules by which the principal employer is made liable for payment in the event of non-compliance by the contractor with this condition. If the contractor commits a breach of the conditions of his licence he alone will "take the consequences. The right of the workers to recover any additional wages which may be so determined would be against the contractor, The appellant would, however, be liable under Section 21(4) to pay to the workers any difference between the wages contracted for under its agreement with security agency and the lesser wages actually paid by the contractor to contract labour, and recover the same from the contractor.

Conclusion:

No matter the system can enact series of laws for regulating the terms of employment of security guards, but unless the compliance is strictly monitored, one cannot prevent exploitation of these workers. As we observe most of the security guards employed in different establishments are migrant workers and are ready to work for meager wages, these workers are not even aware of laws which will help them improving their terms of employment. This being fact having bunch of legislations is of no use.

REFERENCES

1. Kumar, H.L. Labour and Industrial Law, 10th Edition, Universal Law Publishing Haryana
2. Malik's, P.L. Handbook of Labour and Industrial Law, Eastern Book Co. Lucknow.
3. Karbanda, V.K. Commentaries on Contract Labour (Regulation and Abolition) Act, 1970, Law Publishing House, Allahabad
3. Mishra, S.N. Labour and Industrial Laws, Central Law Publications, Allahabad
4. Srivastava, S.C. Industrial Relations & Labour Laws, Vikas Publishing House Pvt. Ltd, New Delhi
6. Kumar, H.L. Obligation of Employers under Labour Laws, Universal Law Publishing, New Delhi
7. Kumar, H.L. Employers Liability on Accidents, Universal Book Traders, Delhi
8. Dr. Avtar Singh, Introduction to Labour & Industrial Law, Wadhwa and Company, New Delhi
9. Prabir Kumar Chattopadhyay, Contract Labour in India- A Conceptual Analysis, International Journal of Research in Business Management (IMPACT: Progress in Research).
10. Meenakshi Rajeev, Contract Labour Act in India: A Pragmatic View International Journal of Economic Policy in Emerging Economies.
11. Gore Sekai Noreen and Uzhenyudominic, The Effects Of Working Conditions Of Private Security Guards On Job Satisfaction, IOSR Journal Of Humanities And Social Science.

I.L.O Conventions

- Convention concerning Fee-Charging Employment Agencies (Entry into force: 18 Oct 1936)
- Convention concerning Fee-Charging Employment Agencies (Revised 1949) (Entry into force: 18 Jul 1951)
- Private Employment Agencies Convention, 1997 (No. 181) Convention concerning Private Employment Agencies (Entry into force: 10 May 2000)

Judgements

- *Deccan Cronicle v/s G Pedda Reddy*, (2004) LLR 809, AP H.C
- *Hindustan Steel Works Construction Ltd v .The Commissioner of Labour and Ors.* (1996) 10 SCC 599
