DOCTRINE OF CONTRACTING OUT

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Under the original rules of Common Law the relationship between the employer and employee was entirely governed by what was agreed upon the parties as to the benefits and burdens of employment. The Contract of Service was the sole depository as to the rights and duties of the contracting parties. When Statutes were enacted on various aspects of labour relations the question was whether it was open to the parties to enter into a contract which was inconsistent with the provisions of the Act. In dealing with controversies arising from the agreements which the employees had executed with their employees foregoing the benefits of any Statute the Courts held that where a Statute has been enacted on any matter it will be the provisions of the Statute and not the contract which will govern the relationship of the employer and the employee. This principle in course of time has come to be known as the Doctrine of Contracting Out. The Doctrine of Contracting Out has since become part of the several Statutes enacted by the Legislature.

This article has the object of discussing how the Doctrine of Contracting Out has been adopted by the Legislatures and how the Courts have interpreted the scope of this doctrine.

Under the Common Law of England in a civil suit for damage for injuries sustained by the workmen it is open to the employer to plead:

- The doctrine of Common Employment by which the employer is not normally liable to pay damages to workman for an injury resulting from the default of another workman;
- The doctrine of assumed risk by which an employee is presumed to have accepted a risk if it is such that he ought to have known it to be part of the risk of his occupation.

Like the Doctrine of Contracting Out the Doctrine of Common Employment was yet another wicked rule which affected the interests of the industrial workers. The same was the position in India also.

The Royal Commission on Labour regarded both these doctrines as inequitable and recommended by a majority that a measure should be enacted abrogating these defences. The Provincial Governments were consulted in 1932 and were almost unanimously in favour of the legislation for the purpose. In the meantime, judicial decisions in British India were generally agreeing as to the inequitability of the doctrine to have been such as to leave it open to the employer in most Provinces to have recourse to them.

The 'Employers Liability Act was passed by the Legislature in September, 1938. After independence, the Act was adapted by the Adaptation Laws Orders, 1952 and extended to some of the States by Part B States (Laws) Act, 1951.

The Preamble of the Act declared that certain defences shall not be raised in suits for damages in respect of injuries sustained by the workmen. Section 3 of the Act dealing with the defence of Common Employment provided as follows:

> "Where personal injury is caused to a workman - (a) by reason of the omission of the employer to maintain in good and

safe conditions any way, work machinery or plant connected with or used in his trade or business or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition, or by reason of any negligence of any person in the service of the employer who is in superintendence entrusted to him while in the exercise of such superintendence or.."

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman or in the service of or engaged in the work of the employer."

By an amendment made to the Act, in 1951 it was provided as follows:

"31-A *Contracting out*: Any provision contained in a contract of service or apprenticeship or any in an agreement collateral thereto shall be void insofar as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of person in common employment with him."

Subsequently, the Legislatures adopted this Rule in several Statutes which they happened to pass. Therefore, Section 58 of the Andhra Pradesh Shops and Establishments Act, 1966 dealing with the system of contracting-out provides:

"Any contract or agreement whether made before or after the commencement of this Act whereby an employee relinquishes any right conferred by this Act shall be null and void insofar as it purports to deprive him of such right.

Section 23 of the Payment of Wages Act, 1936 provides for the rule against contracting out thus:

"Any contract or agreement whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void insofar as it purports to deprive him of such right."

Section 25 of the Minimum Wages Act, 1948 provides.

"Any contract or agreement whether made before or after the commencement of this Act whereby an employee relinquishes or reduces his right to a minimum right or wages or any privileges or concession accruing to him under this Act shall be null and void insofar as it purports to reduce to minimum rate of wages fixed under this Act."

This section protects ignorant employees from contracting out of the Act. Any contract or agreement by which an employee relinquishes or reduces to his right to a minimum right of wages or any privileges or concession available under the Act as the extent of reducing the minimum wages fixed under the Act be declared null and void by this section.

In *Madanlal v. Superintendent, B.N.C. Mills,* AIR 1954 MP 297, Justice *S.P. Bhargava* of the High Court of Madras held that the Payment of Wages Act confers three rights: (i) the right to receive wages, (ii) the right to receive them at the proper time specified in the Act; and (iii) the right to receive them without deduction.

The facts of the case were: *Shyam Rao Balram Rao* and 1126 other workers of Bengal Nagpur Cotton Mills., Ltd., Rajendrandangaon had made an application against *Badrinarayan*, Superintendent and Manager of the said Mills under Section 15(3) of the Payment of Wages Act that from about 1944 the workers of Bengal Nagpur Cotton Mills Ltd. Regiment were paid good muster wages along with wages of every month. These wages were allegedly paid in order to encourage; the

workers to put in better attendance and the monthly rate was fixed by the Management of the said Mills on the basis of attendance. The payment of good muster wages was made up to the end of October 1955 but was stopped by the Manager.

It was alleged that good muster wage was wages as defined in the Act and the three applicants and 1126 other workers on whose behalf the application was made were entitled to receive it for the month of November, 1955. The total amount of Rs.4,255/- was claimed as due to them as good muster wages. In addition compensation was also claimed. The Authority under the Payment of Wages Act directed payment of the said amount and compensation at the rate of Rs.10/- per worker to all the applicants.

Reliance was placed by the applicant on the decision of the Federal Court in *Heilgers and Company v. Nagesh Chandra,* AIR 1949 FC 142 to the effect that Section 23 prevented an employee from contracting out his rights which were given by the Payment of Wages Act. It was argued that every employee had the right to receive wages without deduction in terms of the existing contract which included express or implied contract. It was further said that though an employee could enter into another agreement advantageous or beneficial to him yet no such contract could be recognized by law as cutting down the right to receive the wages to which he was entitled.

On the other hand it was submitted that there was no bar to the parties modifying the contract of service itself. Section 23 of the Payment of Wages Act only prohibited an employee from entering into a contract by which the employed person relinquished his right under the Act. The amount of wages is fixed by a contract and thus the claim to get the wages arose out of the contract and not under the Act. It was stressed that the question as to what actual wages are and what was the contract between the parties is not a right which was conferred under the Act on am employee. Therefore the contract validly entered into between employer and employee whereby the contract of service has been modified as regards the amount of wages will not be hit by Section 23. It was held that Section 23 does not prevent an employee from entering into a contract beneficial to him. But it invalidates any contract by an employee against the rights conferred under this Act. The section is intended to protect a worker who may be induced into agreement by employers alienating their rights under the Act.

In *Yadav Stores v. Presiding Officer, Third Labour Court,* 1984 Lab. IC 756 Bom. a promise under which a lump sum payment is accepted by an employee in full satisfaction of his claim if the amount falls short of the amount payable at the minimum rate of wages fixed under the Act is illegal. If there is no dispute about the category to which the concerned worker belonged then he must be paid the entire amount payable to him on the basis of the minimum rate of wages applicable to him. Hence, where there was a dispute as to the category, namely, skilled or unskilled which the employee belonged to but was settled between the employer and the same skilled worker, and there was no dispute about the period during which the employee had to work, it was held that the employee was entitled to get the entire amount to him on account of the difference in the amount payable at the minimum rate of wages applicable to him, and the amount actually paid to him. Any compromise discharging the employer for payment of a lesser amount would be hit by Section 25 Contracting out the Minimum Wages Act, 1948.

In *Soniben Mathurbai v. Leather Works Co.,* (1984) 2 LLJ 381, it was held that where the minimum rate of wages fixed by a notification under Section 5 was only time rate and no piece rate was fixed, piece rate was fixed in the earlier agreement for payment of wages and the piece rate basis which had

the effect of reducing such benefits was violative of Section 25 of the Wages Act.

Section 17 of the Workmen's Compensation Act, 1923 provides as follow:

> "Section 17 *Contracting Out*: Any contract or agreement whether made before or after the commencement of this Act whereby a workman relinquishes any rate of compensation from the employer for personal injury arising out of or in the course of the employment shall be void insofar as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Interpreting the above provision it was held by the High Court of Allahabad in *Mohinder Singh v. Dayal Singh,* (1972) 74 FLOR 984, that any agreement or compromise between an employer and employee which result in the employee accepting a lesser compensation than the one to which he is entitled under the Act is null and void and inoperative.

The Court observed, "Section 17 aims at protecting a workman from the employer whereby he induces a workman to agree to accept less compensation than his entitlement or abandoned something to which he is entitled. An employer paying something of his own to a workman does so with the risk that he will not be entitled to get set off or deduction under Section 8. Even the receipt procured by the employer from the widow of Assistant Workman for payment of a lesser amount of compensation than the actual entitlement is of no use as according to the provisions of Section 17 the workman or his dependants cannot contract themselves out. No agreement between the worker and the employer is valid if it reduces the compensation payable to the workman.

In Mrs. *Kathleen Dias v. H.M. Coria,* AIR 1951 Cal. 513, a Division Bench of Calcutta High Court held, "Where a payment of lump sum is made to the widow and other relations of the workman whose injury has resulted in death, the payment cannot by virtue of Section 8 be deducted from the actual amount of compensation payable because that section says that such payment shall not be deemed to be a payment of compensation. This applies with greater force if the payment is *ex gratia*.

DETERMINATION OF THE CASTE OF THE CHILD BASED ON THE CASTE OF THE MOTHER - A CRITICAL STUDY

By

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Husband and wife are the two wheels of a cart. Mutual understanding and adjustments between them makes the home a Paradise on earth.

According to an old Sanskrit verse, the woman was considered "In action like a minister, in kindness like a mother, in service like a maid, in enjoyment like a Ramba". A wife has to perform a number of Roles, of all these the mother's role is very important. She treats even her husband equalent to her children. None of us would never be able to live happily without mother. The love of mother is of the highest and the purest type. No one can surpass a mother in sacrifices. She shows immense tolerance in bringing up her children. Inspite of her great sacrifice