

Fixed Term Employment in India: An Analysis of Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018

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ABSTRACT: A “fixed term employment workman” is a workman who has been engaged on the basis of a written contract of employment for a fixed period. Till recently, there were no provisions in Labour Laws in India as to fixed term employment. But in many European and Latin American countries fixed term contracts are in vogue. While so, a category i.e. Fixed Term Employment was introduced under Industrial Employment (Standing Orders) Act, 1946 to impart flexibility to an establishment to employ people in case of Apparel Manufacturing Sector to meet the fluctuating demands of the sector due to its seasonal nature. Thereafter the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 came into force on 16th March, 2018 which paves the way for fixed term employment. A Fixed Term Employee’s hours of work, wages, allowances and other benefits shall not be less than that of a permanent workman and he will be eligible for all statutory benefits available to a permanent workman 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’. The law will be particularly of benefit to the seasonal manufacturing industries and for skilled workmen. The article analyses the statute and its effect on the Industry.

KEYWORDS: Amendment, Fixed term employment, Rules, Standing Orders

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I. INTRODUCTION

Fixed-term contracts of employment are contractual employment arrangements between one employer and one employee characterized by a limited duration on or a pre-specified event to end the contract between them. Together with project-based, casual employment, and temporary work through private employment agencies, fixed-term contracts represent special forms of temporary dependent employment. As such, they are distinct from regular employment that is ‘open-ended’, ‘permanent’, or ‘of indefinite duration’.

Though in numerous European and Latin American countries, fixed-term contracts are in vogue, there is no legislative provision for fixed term employment in India. Under these circumstances the Government has recently brought changes in law to pave way for ‘fixed term employment’ through the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018. The article analyses the statute and its effect on the employer and the employees.

II. BACKGROUND

2.1 The Industrial Employment (Standing Orders) Act, 1946 and Rules

The Act requires the employers in industrial establishments to define formally conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. Once the jurisdictional certifying authority approves the standing orders, the document plainly is the HR policy of the employer and governs the relationship between management and the workmen.

The Industrial Employment (Standing Orders) Act, 1946 extends to the whole of India. It applies to every industrial establishment wherein one hundred* or more workmen are employed, or were employed on any day of the preceding twelve months (*reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government). According to Section 2(g) “standing orders” means rules relating to matters set out in the Schedule. According to Section 3(2), provision shall be made in draft standing order for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

The Schedule to the Act sets out the matters to be provided in Standing Orders. They are (1) Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis (2) Manner

of intimating to workmen periods and hours of work, holidays, pay-days and wage rates (3) Shift working (4) Attendance and late coming (5) Conditions of, procedure in applying for, and the authority which may grant, leave and holidays (6) Requirement to enter premises by certain gates, and liability to search (7) Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom (8) Termination of employment, and the notice thereof to be given by employer and workmen (9) Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct (10) Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants (11) Any other matter which may be prescribed.

Section 15 of the Act provides that the Appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act. Accordingly, Industrial Employment (Standing Orders) Central Rules, 1946 were framed and have been amended from time to time. The recent amendments to the Industrial Employment (Standing Orders) Central Rules, 1946 have triggered this discussion.

2.2 Recent Developments in the Statute

The Central Government had notified 'fixed-term employment' for 'Apparel manufacturing sector' only in February 2017. In December, 2017, the Union Cabinet approved proposed extension of fixed-term employment to Leather, footwear and accessories industries. During January 2018, the Ministry of Labour had issued a draft notification for extension of fixed-term employment for all sectors through amendment of the Industrial Employment (Standing Orders) Central Rules, 1946. Thereafter the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 came into force on 16th March, 2018 which carries provisions for Fixed Term Employment.

A 'fixed term employment workman' is a workman who has been engaged on the basis of a written contract of employment for a fixed period of time. A fixed term workman's service conditions as to hours of work, wages, allowances and other benefits shall not be less than that of a permanent workman and he will be eligible for all statutory benefits available to a permanent workman 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'.

III. ANALYSIS AND DISCUSSION

3.1 The Amendments which pave way for Fixed Term Employment

- The particulars to be given in the Standing Order are listed in Schedule I. One of the eleven particulars that should be explained is the classification of workmen. The amendment adds one more item viz. 'Fixed Term Employment' to the classification of workmen. The words 'fixed term employment' replaces the words 'fixed term employment workmen in apparel manufacturing sector'. Consequent to this, all other sectors of the Industry covered under this Rules can have 'fixed term employment workmen'.
- Rule 3 now has a new provision viz. 3A, which prevents the employer from converting any of his permanent workmen as at 16.03.2018 into fixed term employment. This has been done to prevent unscrupulous management from exploiting the permanent employee.
- Rule 5 now has a new provision 6A which mandates the employer to give particulars of fixed term employees while applying for certification of standing orders.
- Model Standing Orders which is given as the Schedule to the Rules is of significance because the model standing orders are the guidelines for preparation of Standing Orders of a Firm. Further it is pertinent to note that in absence of certified standing order the model standing order is presumed to have been adopted by the Firm. Here, in the Paragraph 2, wherein 'fixed term employment' has been included as one of the classes of workmen. Further a new sub paragraph (h) reiterates fixed term employment workman as 'a fixed term work based on a contract.'
- New sub paragraph h(a) ensures that, the working hours, wages and benefits for fixed term workman shall not be less than what is being given to a permanent workman.
- New sub paragraph h(b) ensures that, the fixed term employee will be entitled for statutory benefits proportionate to his length of service notwithstanding the qualifying period prescribed in the respective statutes.
- New paragraph 13(b) provides that, no notice of termination of employment is required at the expiry of the fixed term.

3.2 Benefits of Fixed Term Employment

- Fixed Term Employment will be advantageous to industries with seasonal manufacturing work. Further, the industries which are involved in term based assignments or projects will also be benefited by the Fixed Term Employment.
- Fixed Term Employment will be of benefit to skilled workers because their skills are in demand and command high wages. Hence they will not be frightened by the limited-duration contracts.
- The employers, in general will be benefitted by (i) the freedom from intricacies relating to termination of employment and (ii) the exclusion from complying with the contract labour laws.

3.3 Issues

- The Small and Medium Enterprises which operate with thin profit margin may not opt for fixed term employment. Instead they would stick on to contract workers to whom they pay lesser wages. This is a significant issue since the Small and Medium Enterprises form the large crux of the Industry in the Country.
- The free hand given to the Employer for 'hire and fire' workers will make the unskilled workers vulnerable to the unethical actions of an unscrupulous employer.
- The fixed term employment has been brought only for Industrial Establishments. Commercial Establishments are not covered.
- The changes have been made by the central government in the central rules and applicable to the industry covered under it. One needs to wait and watch how the state governments bring the relevant amendments in their respective state rules.

IV. CONCLUSION

In case of permanent employment, the Management has a grievance that, it does not have a free hand to hire and fire. In case of contract jobs the workers have a grievance that the pay and working conditions are poor. The fixed term employment proposes a compromise between permanent employment and contract jobs. Skilled and highly skilled workers will be immensely benefited by the fixed term employment as they are always on demand. But the unskilled and semiskilled workers are vulnerable to unfair practices by the employer. The government should take care of them using its law enforcement machinery. For the industries involved in seasonal production and for those firms who are engaged in project based assignments, fixed term employment would be very beneficial. But the Small and Medium Enterprises who operate at thin profits would not prefer the fixed term workmen. They would rather continue with contract workmen who are available for lesser wages and benefits. Further how the state governments take forward this initiative by bringing changes in their state rules is to be waited and watched. To conclude, if implemented by the employer ethically, the Fixed Term Employment will satisfy all stakeholders and provide competitive advantage to the Indian Industry.

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