**Who is a workman?**

B Y P A R V E Z R A H I M | 10/24/2019

|  |  |
| --- | --- |
| WHETHER or not a person employed in an industrial or a commercial establishment is a worlcman under the law has remained one of the most controversial issues in courts of law for almost a century. Why? Because a workman is covered and protected by the labour laws, and hence entitled to certain rights and is eligible to receive various benefits and privileges guaranteed by the law.  The same is not available to employees, who do not fall within the workman category.  The most significant among these rights is the right to file a petition for reinstatement in a labour court if a workman considers himself wrongfully dismissed from service by the employer. When I started working in the field of industrial relations in early 1972, labour courts had to deal with several such cases in which they had to determine the status of a petitioner. Once a person was defined as a workman, the courts would proceed on the question of whether or not his dismissal was justified.  The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, defines a workman as `any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward`. The courts at that time would not consider watchmen or drivers as workmen as they were not seen to perform actual manual work. Hence the doors of justice against unfair dismissals were shut for them.  While defending the companies` action in cases of dismissal from service, the employers` lawyers mostly challenge the petitioner`s status as `workman` under the law in their preliminary objections. If the objection is accepted, the matter is over and the courts do not go into the details of the case.  I encountere d such a situation while working at a state enterprise at Kot Lakhpat, Lahore. One of the company`s car drivers was rude and quarrelsome and would misbehave with everyone. He was dismissed. He filed a petition for reinstatement before the junior labour court, which was supposed to provide speedy justice to aggrieved workmen and give its decision within seven days.  Such courts were established by the first PPP government but did not last long as they would often flout the short deadline for the closure of cases.  In this case, I raised the preliminary objection that the petitioner being a car driver was not a workman under the law as he did not perform any manual labour. The court upheld my plea and dismissed the driver`s petition.  In 1973, the section regarding the filing of a grievance petition with the employer and then with the court if the petition was rejected by the former was shifted from theordinance of 1968 to the Industrial Relations Ordinance, 1969. This ordinance considered everyone a worl(man except those employed in a managerial or an administrative capacity. Consequently, the argument concerning car drivers not being considered workmen was no longer sustainable and the issue was settled. By virtue of a Supreme Court judgement in 1996, watchmen also came to be considered as workmen.  It is ironical that there are numerous superior courts` judgements in Pakistan and India that hold pilots as workmen despite their lucrative emoluments and perquisites.  In one case, it was held that if any employee claims he is a workman, the burden of proof falls on him to produce documentary or oral evidence in support of his contention. If his duties do not involve work of a manual nature but, instead, require the application of his mind or supervising work done by others, then the employee cannot be held to be a workman.  Every labour law has its own definition of`workman` or `employee`, which makes the persons falling within this category eligible to receive the benefits provided under that enactment. In some of the labour laws, the eligibility of persons falling under the definition of `workman`or `employee` is determined through a fixed wage ceiling, while in others it is based upon the nature of work performed by the individual.  For instance, the Provincial Employees` Social Security Acts, have been made applicable to employees drawing a monthly salary of up to Rs22,500 in Sindh and Rs22,000 in Punjab. On the other hand, the Employees` Old-Age Benefits Act is extended to all employees of a company except its directors.  People having a cursory knowledge of labour laws often ask why there can`t be one definition for workman in all labour enactments. However, practitioners and consultants of these laws are of the opinion that it becomes necessary to restrict the application of labour laws only to those employees whom the legislatures wish to provide particular benefits or safeguards to. Therefore, in order to avail the rights and privileges provided under labour laws, the claimant must first establish that he fits the definition of `workman`.  The writer is an industrial relations professional. |  |