

## Types of Employment

### **1. Monthly contracts of employment**

A person described as a 'permanent employee' usually refers to one who is on a monthly contract of employment. This is a contract of employment which is automatically renewed every month unless it is terminated by either party with the requisite notice. Such an employee is paid monthly and has the right to work till his retiring age unless discontinued work based on disciplinary grounds. These types of employees are usually kept on probationary period before confirmation as permanent. They have a high level of job security.

### **2. Fixed term contracts**

This is where a person is employed for a fixed term. There is no guarantee that the contract will be renewed on the expiry of the period stipulated, the contract coming to an end by mutual consent at the end of the agreed period. This is a consensual termination of a contract as a result of mutual agreement, on the arrival of a particular date. (*De Silva v. Associated Newspapers*)

However, if the company has renewed contracts as a practice before, the labour courts can ask the employer to renew the contract. In *G.O. Buyers v. Harrison & Crossfield Ltd*, a 3 year contract was not renewed on expiry. It was said that, when signing the contract, he was informed that expiry was mere formality and that he would be allowed to work till age of retirement. The employer admitted that the normal practice was automatic renewal.

### **3. Probation**

The oxford dictionary defines 'probation' as the testing of conduct or character of a person. This is a fixed time period which allows both the employer and employee to make a decision on working for the organisation. The employer assesses the employee's aptitudes, abilities and characteristics and the amount of interest he shows in his work. It is entirely the decision of the employer whether the probationer has put in satisfactory amount of work and the employee is not bound to give reasons on his decision.

In *State Distilleries Corporation v. Rupasinghe*, the supreme court held that in a confirmed employment, the burden lies on the employer to justify termination. However, in probationary employment, the burden of proof lies on the employee to establish unjustifiable termination. It was also said that there are few options to an employer at the end of the probationary period. If the employer is not satisfied, he could dismiss the probationer or extend the probationary period. (*Richard Pieris & Co. v. Jayathunga*) If he is satisfied, he cannot dismiss the probationer.

There is no automatic confirmation at the end of the probationary period unless the contract says so. (*Hettiarachchi v. Vidyalankara University*) Further, termination is allowed during the probationary periods as well due to misconduct.

## 4. Casual employment

A casual employee is employed by chance on no contract to employ. For example, a window cleaner who is employed at irregular intervals, when the house owner thinks that windows require cleaning belongs to this category. However, if there is an arrangement where he is required to come once a month, he would not be a casual employee as his job becomes stable and periodical.

In *Hill v. Begg*, a man who was doing odd jobs was employed by the occupier of a house to clean the windows at an irregular interval. He has worked for a total of 6 weeks during the 2 years period. He was paid daily whenever he windows required cleaning. The court held that he was a casual employee.

On the other hand, in *Ceylon Ceramics Corporation v. Weerasinghe*, a workman who was employed as a trainee sales assistant and was paid monthly on a daily rate was not considered to be a casual employee.

## 5. Temporary contracts of employment

A temporary employee is one who is employed to satisfy an employer's temporary need, the duration of which is limited either by the job or by time. He will be employed in relation to work which is a part and parcel of the employer's business. He is employed in order to fill the temporary gaps of a regular worker. For example, if the personal secretary goes on maternity leave, a temporary employee will be hired until she gets back to work. (Lanka Podu Seva Sangamaya case)

## 6. Seasonal contracts of employment

The employer is free to employ anyone he chooses on seasonal work. The employer cannot be compelled to renew the contracts in succeeding seasons. However, this depends on the nature of the situation. An example could be residential hotels during the tourist season.

## 7. Apprenticeship and training

An apprentice is a person who is bound to another person for the purposes of leaning his trade. This is not necessarily done in order to earn money, instead the contract is of the nature where the master teaches and the other serves with the intention of learning. Eg: lawyers

## PAST PAPER QUESTIONS

- ❖ “Probationary employees” under probation has no right to get a feedback of their performance from the employer. Discuss the above statement with reference to inherent rights of the employers to terminate the services and stating how judicial view over this matter has developed over time. (16 marks) – **OCT 2015**
  
- ❖ (a) Name the different types of employment found in Sri Lanka and briefly explain them.
  
- (b) Discuss about
  - the termination of a probationer during the period of probation and
  - can a probationer claim automatic confirmation on the expiry of the period of probation?
  
- (16 marks) – **OCT 2014**