

Sri Lanka: End of permanent employment? Outsourcing the job, in-sourcing the employee

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Globally job seekers who are looking for permanent jobs are in a crisis, since most of the companies are now to getting their work done through workers supplied by manpower agents. Nowadays youth are compelled to seek employment through these manpower agents since there is no other alternative for them.

Most of the companies use this system in order to deprive these workers from getting their legitimate wages and rights. This system is called “disguised employment”. That is because companies hide the fact that they are the true employer of these workers.

Under globalisation this cancer has spread to Sri Lanka also. Not only private companies, but government and semi government institutions also use of this system. This system allows companies to make billions in profits. We see that some companies use certain tactics to sack their permanent workers in order to replace them with man power workers. This manpower system is completely illegal. In Sri Lanka there are laws to prevent this type of disguise employment.

There are two methods that companies use to get their work done through the external manpower workers.

1. Outsourcing the job.
2. In-sourcing the employee

In the first method production of the goods and services is done through a contractor and in a place outside the company premises. One example is the production of shoes. In Sri Lanka we can see famous branded shoes are produced in places like shanties. Workers work in these places without required basic facilities. Some contractors use children for this purpose.

However raw materials, instructions relating to the product and the labour costs provided by the main company.

Job agencies

In the second system institutions select workers through manpower agents and employ them in their work places (eg. banks, financial institutions, computer service providers, etc). They work in the company premises with the other permanent workers. Companies select the person and arrange an appointment letter issued under the letterhead of manpower agent. The agents' names are printed on these workers appointment letters, attendance sheets, leave applications and salary slips, etc. Anyone looking at these documents, at the first glance, would tend to believe that the worker is an employee of that agent. However their work is assigned and supervised by the company staff. Their attendance, leave and overtime are also monitored by the company staff. There are laws to prevent such abuses. Judgments of the Superior Courts of Sri Lanka and Britain have given us guidelines in finding out the real employer of a workman, when there is a question of identifying the employer.

A widely used method is the control test. Through this method courts find out the party that controls the work of the worker, that is who assigns work and who supervise his work. In addition the supervision of the workers attendance, overtime and leave are also considered. The sources of payment of wages are also considered. The party that really selects the worker is also considered. Result of these tests could identify the true employer of the workman.

The most widely recognised case regarding this matter is that of the Fertiliser Corporation vs Ceylon Mercantile Union (CMU) decided in 1984 with respect to 502 employees whose services were terminated by the Corporation.

The union filed a case against the Corporation at the Labour Tribunal. At the inquiry Hunupitiya Co-operative Society who supplied the workers to the Corporation, claimed to be the employer. The central issue was whether the Fertiliser Corporation or Corporative Society was the employer. Applying the aforementioned test the Court held that these workers were controlled by the Corporation and the Hunupitiya Co-operative Society only acted as a conduit to transfer wages from the Corporation to the workers.

Using these guidelines, in a recent case filed by a so-called "out-sourced" employee of the Commercial Bank, the Labour Tribunal of Ampara held that the worker was an employee of the bank, and not the manpower agent Carekleen & Co. It was held that the said agent did not have any control over the work of the worker.

There are millions of so-called manpower workers who in fact and in law are employees of the main company and do the very same work as permanent employees in their work places. No effective steps have been taken to stop this exploitation.

In my view there are three main reasons for this;

- Workers recruited through manpower companies are not aware that they are in fact and in law employees of the company which they work.
- There is a tendency among permanent workers of a company also to think that these manpower workers are of a different breed to them and they don't treat them as their equals.
- Even union leaders treat these manpower workers differently and look for alternative ways to solve the problem, probably due to a lack of knowledge of the true status of employment of these workers.

There was a proposal from the National Labour Advisory Council which is headed by Gamini Lokuge, Minister of Labour and Labour Relations, to amend the wages board ordinance in order to resolve

disputes relating to disguise employment. A Cabinet sub-committee has also been appointed to look in to this amendment but so far nothing has been done during the past two years.

This amendment had the support of government, employers and unions (including pro government unions) representatives in the National Labour Advisory Council. It is high time political parties consider passage of this amendment in parliament in the wake of impending elections.

Social impact

Due to lack of attention regarding this issue by the authorities including trade unions, millions of manpower workers are virtually working as slaves.

Salaries of these workers are around Rs. 10,000 per month which is about 1/3 of that of a permanent worker. Blue chip companies which make several billions in profits per year also treat these workers as slaves. A considerable percentage of their profits are not actual business profits of these companies. Salaries and other emoluments which are to be paid to these 'manpower' workers are also shown as their profits. On the other hand we can say that billions of rupees are robbed from these workers and declared as profits to the stake holders.

What about the worker? They give of their sweat and blood for their day to day living. Can anyone imagine a person living with a salary of just Rs. 10,000 per month? What can they eat (on this income)? Where can they live?

Do they have a life? They show the world that they work for a big company, and the world expects some standard of living from them. But these manpower workers are not able to maintain the standard expected from permanent worker. A government survey revealed that a family of four needs around Rs.59,000 per month for their living. Even permanent workers in the private sector are struggling to get their basic salary increased to at least to Rs. 21,000 per month, which is the minimum salary of a government worker. So what about a manpower worker who earns a mere Rs. 10,000 per month? There are thousands of manpower workers who can't afford to marry with such a poor salary. We can see hundreds of young couples living together without getting married, in areas close to the Free Trade Zones and other factories, which has turned out to be another social issue. What can society expect from these frustrated workers? Day by day the number of these workers is increasing.

Economic impact

Development of a society can also be measured in terms of increased production. Production is increased with increased demand. If the buying power of the people decreases we can't expect an increase in demand. But what happens is that the buying power of the people is reduced since their income is reduced. Companies are removing their senior workers who earn higher incomes through various retirement schemes, in order to replace them with manpower workers. Thus total earnings of the workers gradually reduce, thereby reducing their buying power. Finally what will happen is that there would be no buyers to buy goods. We are experiencing this situation in relating to big companies. They are struggling to sell their products.

Erosion of collective bargaining

Union leadership should understand that with the increased employment of manpower workers the bargaining power of the unions have reduced. Various collective agreements cover certain categories of employees, the number in such categories is being surreptitiously reduced by the employment of these so-called manpower workers. It can also be seen that in some companies non-union members are more than unionised members. In the near future trade unions may only be limited to name boards without members.

Way out

Victims of these workers of manpower menace are not aliens. They may be your own kith and kin, child, friend or neighbour. Companies might claim that 'our interest is in you' or that they are 'pulse of the people'. But are they really interested in you, their customers, when they do not show the slightest interest in their own employees who are treated as manpower workers. Are we to allow this form of modern slavery?

Wijepala Weerakoon

P.S.

* "End of permanent employment?". The Sunday Times Sri Lanka. Sunday, October 26, 2014:
<http://www.sundaytimes.lk/141026/business-times/end-of-permanent-employment-124000.html>

* The writer is a former Executive Committee member of the Ceylon Bank Employees Union.