



# Post Qualification Internships in India a Critical Analysis

ARUN SASI

Professor,

Law at XIM University Bhubaneswar, Odisha

## 1. Introduction

India has witnessed a steady economic growth and increase in employment in the last two decades concerns have been expressed with regard to low growth in productivity and dearth of „decent employment India has witnessed drastic hike in internship especially the post qualification internships recently. The rise in internship is mainly attributed to startups but even government sector has increasingly resorting to providing internships. The reasons stated are manifold, It is suggested that the reason for spur in internships. indicates a mismatch between academic education and industry requirements.<sup>1</sup> Another reason for such increase in internship is the strategy of decoupling of training from paid employment. System of probation of an employee whereby the employer evaluated the employee is being replaced by internships.<sup>2</sup> From a mainstream employability perspective the employees are also resorting to internships, as unpaid work is advantageous in a fluctuating, uncertain economy as it improves skills, knowledge and experience, assists an individual to match their human capital profile to labour market demands and enhances their long-term marketability. Many of the jobs that are being posted on the websites are targeting women returning to workplace after a break. The government strategy is also to foster internships. The student internships are a part of a student’s curriculum and is being insisted upon by statutory bodies like Bar Council of India and AICTE, it is intended to provide the students with practical knowledge of their curriculum. There were many initiatives by the government to bridge the gap between the academia and the industry like NEEM trainees who were trainees in different designated trades who could be engaged by an organization they were excluded from employment relationship despite earning monthly remuneration/stipend at a prescribed rate of minimum wages applicable for the unskilled category. This stance was changed first by including NEEM trainees within the ambit of ‘employees’ through a further clarification dated 24 February 2022<sup>[14]</sup>. This was again reversed through the notification dated 23 December 2022<sup>[15]</sup> which discontinued the NEEM Scheme with immediate effect after pushback from the society. The rise in internship need not essentially be detrimental to the interest of the employees. As Grant-Smith and McDonald (2018, 566) note in their literature review: From a mainstream employability perspective, unpaid work is advantageous in a fluctuating, uncertain economy as it improves skills, knowledge and experience, assists an individual to match their human capital profile to labour market demands and enhances their long-term marketability. But there are widespread allegations that Post Qualification Internships are used as ruse to deprive the benefit of permanency to workers. It is important to understand which labour laws are applicable to post qualification interns.

## 2. Interns and labour law question of misclassification

Indian labour laws are silent on internship, which traditionally have been outside the scope of labour regulation. Labour laws envisage the concept of apprenticeship which is closest to interns. Apprentices can be divided to statutory and non-statutory apprentices. Statutory apprentices are the apprentices who are registered under the Apprenticeship Act 1961. In the case of IMRAN AHMAD Petitioner(s) VERSUS UNION OF INDIA<sup>3</sup> Supreme Court of India dismissed a writ petition seeking directions to the Union to

<sup>1</sup> Bridging the qualification gap between academia and industry in India

<sup>2</sup> Analysis.

<sup>3</sup> Civil Writ Petition No. 13297/2021

regard interns as trainees under Apprentices Act, 1961 and consider them for stipend, working hours, leave and other legal protections available to trainees. There is lack of clarity as to whether interns would come under the ambit of non-statutory apprentices too. Since internship is akin to apprentices as objective of both the arrangements are for providing training to employees, it can be considered the same from a legal point of view.

### **3. The Industrial Employment (Standing Orders) Act 1946**

The Act which determines employment conditions of workmen classify apprentice as a workmen<sup>4</sup> and defines it as a learner who is paid an allowance during the period of his training. Hence the Standing orders Act shall be deemed to be applicable to post qualification interns.

### **4. Employees Compensation Law**

The Employees compensation law is the principal compensation legislation for the employees in the country. The question whether post qualification whether post qualification interns should be considered as employees have been addressed by plethora of courts. For example, Telengana High Court in the case of *The Se., Apcpdcl., Nalgonda vs Smt.Lavuri Neela*<sup>5</sup>, the question was whether an apprentice/trainee would fall within the ambit of Employees Compensation Law. It was observed by the court that the point of law is clear on a plain reading of Section 16 which reads Section 16: Employer's liability for compensation for injury:

“If personal injury is caused to an apprentice, by accident arising out of and in the course of his training as an apprentice, his employer shall be liable to pay compensation which shall be determined and paid, so far as may be, in accordance with the provisions of the Workmen's Compensation Act, 1923.”

So, Employees compensation law shall be applicable to post qualification interns which entails that employer will have to compensate the intern for any employment injury.

### **5. Employees' State Insurance, Act 1948**

As per Sec 2(9) of the ESI act, apprentice under the Apprentices Act or Standing Orders is outside the ambit of ESI. The Supreme Court has reiterated the position in *RPFC –vs- Central Aercaunt & Coca Mkt. & Processing Co-Op. Ltd* 2006 1 LLN 995.

But this position has been widely misused by unscrupulous establishments, who engages trainees/interns/apprentices for many jobs. Many HCs has lifted the veil and looked into whether the purpose of work is really training or the designation is used a ruse.

Kerala HC has explicitly considered obligation of the organization to interns with regards to ESI contributions, it decided as follows.

*Employees' State Insurance Corporation vs. Old Courtyard*<sup>6</sup>

Kerala High court has taken a decision on Trainees. Trainees or apprentices not under Apprentices Act would be treated as ‘employees’ under ESI Act. Hence it can be understood that an Apprentice or a post qualification intern shall be considered as an employee. It would entail that any stipend which is made to the intern shall be subjected to ESI deductions.

### **6. Employees Provident Fund Act**

By circular dated 27 July 2022, student interns have been exempted from application of EPFO Act<sup>7</sup>. The question whether post qualification interns are covered under EPF has been addressed by various courts for example in the case of *Bharat Sanchar Nigam Limited vs. Union of India and Others* 2015 LLR 893

<sup>4</sup> The Industrial Employment (Standing Orders) Act 1946 First Schedule states “Classification of workmen, e.g., hether permanent, temporary, apprentices, probationers, or badlis”

<sup>5</sup> CIVIL MISCELLANEOUS APPEAL No.740 of 2010

<sup>6</sup> 2015 LLR 759 (Ker. HC)

<sup>7</sup> Circular No. Coord./40(5)2015/Misc/clarification/27308

It was held by the HC that the provisions of Employees' Provident Funds and Miscellaneous Provisions act, 1952 include every person including apprentices or trainees within the purview of definition to the expression 'employee' except those engaged under the Apprentices Act, 1961 or Standing Orders. If it is not explicitly mentioned in the offer document that the intern is a trainee as per the standing orders Act. PF could be attracted.

### **7. Industrial Disputes Act 1947**

The Industrial Disputes Act is a legislation which is applicable only to workman, The definition of Workmen as envisaged under Section 2(k)<sup>8</sup> of the Industrial Disputes Act is wide but plethora of courts have determined that it would not include trainees or apprentices. For example, the delhi high court in the case of *Raj Kumar Rastogi vs. P.O. Labour Court-X & Anr.*<sup>9</sup> observed that;

Trainees/Apprentices who are paid stipends who and does not have a lien for an employment in the company after successful completion of training are not workmen as per the Industrial Disputes Act.

The post qualification interns if are provided internship for a fixed time period, they will not come under the ambit of the ID act but if they are given right to be a permanent employee after the internship then they will be considered as workmen and would the benefits envisaged under the Industrial Disputes Act 1947.

### **8. Payment of Bonus Act**

Section 2(13) of the Payment of Bonus Act defines who is an employee It states;

“employee” means any person (other than an apprentice) employed on a salary or wage not exceeding twenty-onethousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

The definition exempts, Apprentices from its ambit. The various high courts have interpreted the said clause and determined that only apprentices under the Apprenticeship Act shall be exempted from the application of Payment of Bonus Act for example in the case of *Textool Co. Ltd. vs Income-Tax Officer*,<sup>10</sup> it was observed by the Madras High court that; trainees were not apprentices employed under the Apprentices Act, 1961, who alone would be excluded from the Payment of Bonus Act.

Post qualification interns shall also be eligible for bonus as the only exemption is statutory apprentices registered under the Apprenticeship Act 1961.

---

<sup>8</sup> workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical ,operational ,clerical or supervisory work for hire or reward ,whether the terms of employment be express or implied ,and for the purposes of any proceeding under this Act in relation to an industrial dispute ,includes any such person who has been dismissed ,discharged or retrenched in connection with ,or as a consequence of ,that dispute ,or whose dismissal ,discharge or retrenchment has led to that dispute ,but does not include any such person-

i)who is subject to the Air Force Act,1950 (45 of 1950), or the Army Act,1950(46 of 1950), or the Navy Act,1957(62 of 1957); or

ii)who is employed in the police service or as an officer or other employee of a prison; or

iii)who is employed mainly in a managerial or administrative capacity; or

iv)who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him ,functions mainly of a managerial nature.

<sup>9</sup> , 2015 LLR (Del. HC)

<sup>10</sup> [1984]9ITD820(MAD)

### 9. Payment of Gratuity Act 1972

Similar to Payment of Bonus Act the definition of employee envisaged under Section 2(e) of the Payment of Gratuity Act<sup>11</sup> excludes all kinds of Apprentices but various courts have interpreted it to include Apprentices/trainees other than registered under the Apprenticeship Act 1961. For example, in the case of Chairman-Cum-Managing Director, ... vs Regional Labour Commissioner<sup>12</sup> it was observed by the court that “*Act specifically excludes the apprentices appointed under the Apprentices Act, it does not exclude trainees and the trainees will be covered by the definition of 'employees' given in the Act.*”

### 10. Minimum Wages Act 1948

Trainees/Apprentices comes within the ambit of Minimum Wages Act 1948 so it can be contended that post qualification interns are subjected to the Minimum Wages Act. This position has been observed by courts in plethora of cases. For example in State Of Tamil Nadu vs M/S. Sri Renga Apparels (India) Pvt. Ltd it was observed by the Madras High court that trainees are also covered under Minimum Wages Act. There is flagrant violation of minimum wages laws when it comes to post-qualification interns.

### 11. Income Tax Act

As far as the IT Act is concerned,

#### Section-10 (16) of the Income Tax Act reads as follows:

“In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

- scholarships granted to meet the cost of education”

Interns perform work similar to that of a regular employee and are paid a stipend for their work.

Therefore, the stipend income derived by them will not be eligible for exemption u/s 10(16) of the Income Tax Act. These individuals will be liable to pay income tax on stipend income.

### 12. Conclusion

Silence of the labour laws on regulation of Post qualification interns have led to widespread exploitation of interns in the country. Most of the labour legislations like, Minimum Wages Act, Payment of Bonus, Payment of Gratuity etc, is applicable to trainees by extension interns but lack of will in the labour law administrators have ensured that interns are effectively outside the ambit of labour laws. The new labour codes are also silent on the position of interns. It is the responsibility of legislature to step in and clarify the position.

---

<sup>11</sup> Section 2(e) of the Payment of Gratuity Act reads (e) "employee" means any person (other than an apprentice) employed on wages, [3] [\*\*\*] in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [4] [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].