

Labour Structure of Professional Players and their Employment Rights

By Adv. Nikita Vaigankar¹

Abstract

Sports are a form of recreation and a game of skills, wherein players can't be controlled on how to play on the field but can be guided and protected by their employers with appropriate rules of employment.

This research therefore, revolves around a **central question** *Whether a relationship of employer and employee exists between a player and an organization to which a player is attached to and what is the structure of such a relation?*

It is significant to note that this research covers sportspersons as employees, who play sports as a part of their professional activity and earn an income only through this source. However, this research doesn't cover coaches, referees and other employees of any club or Federation or even the players who play sports just for recreational purposes.

Thus, this research contains and covers governing of employment law in sports with respect to the rights and privileges of a player when he is an employee of a sports-related organization, be it a team, federation, franchise or a club. The highlight of this research is to create awareness among readers that even a sportsperson is an employee and is under the control of some organization of which he/she is a part. Moreover, this research shall also focus on an important aspect of restraint of trade in sports and its consequences.

¹ Practicing Advocate, Goa District Court, LL.M (Intellectual Property Rights).

Introduction

Due to the commercialization of sports, most professional team sports enter into collective labour relation contract. Players are engaged in sports for their livelihood too. They want to build their career and wish to maximize the financial returns of their labors, unlike earlier when it was believed that sports is something one does, when not working.

The express terms of the employment contract of sports usually promise to play the sport whenever directed by the club, attend training sessions and carry out instructions of the coach. These terms put the issue of employment beyond doubt.

Very few of us must be knowing that players who are a part of any clubs or franchise, are their employees. While, it is very unfortunate to note that many clubs, teams, franchises, federations lack awareness on the employment law to which they need to adhere to. This is because they lack well-resourced HR and legal departments in their respective federation or teams.

Here, we are looking at the international perspective of employment law in sports but it is quite pertinent to note that employment law varies differently in different jurisdictions. Players find it difficult to prove to their respective federations that they are employees with employment law rights and protections.

An athlete possesses his or her employment rights just like any other working person and club or a federation owe its duties as an employer towards an athlete.

Similarly, a professional club athlete directly falls into a category of an employee of the club as they are obliged to participate in the training or matches and usually receives a salary and hence, are bound by the instructions and control of the club. However, they are entitled to receive their employment rights also.

In the same manner, clubs that employ players have discretion in deciding the punishments for any wrongdoings outside the purview of the rules of the respective club. These punishments may range from fines, Bans or even dismissals, etc.

Whether a relationship of employer and employee exists between a player and an organization to which a player is attached to and what is the structure of such a relation?

Employer-employee relationship in general means when there is an agreement between the parties, one person (employee) agrees to work under the direction and control of another (employer) for remuneration and agreement between them could be either expressed or implied.

However, just entering into an agreement is not enough because in most of the agreements, terms and conditions are in favour of the employers and hence reportedly, according to the federation of International Cricketer's Association, a majority of male players feel insecure in their contract,² while a quarter of female players do not even have a Contract.³

We shall directly move on to the central question of our research which we can call as hypothesis of the research. If we try to find an answer to it, there comes two views in light.

First view is that, Yes! There exists such a relation since, all the requirements of an employer and employee's relation are satisfied. While the other view holds that the said relationship is not related to employment rather, it is a relationship of co-operation between the two, where there is no jurisdiction of courts.

To bring our understanding closer, let us look at Indian Premier League (IPL), where each player can be referred to as an employee of their respective teams because they are registered with that team for that particular year and are banned from playing any other team in IPL during that season. Thus, making them the subject of management.

In a case decided by an English Employment Appeal Tribunal⁴, which was brought by a professional Basketball player Will Hall against British Basketball club, the London Lions, the tribunal upheld all the claims of Will Hall which included his claims for wrongful dismissal, holiday pay and other breaches of employment law by the club. The club said that the claimant was an employee but not entitled to a holiday as professional basketball players did not take any holiday. In this case, the

² FICA: FICA men's professional cricket global employment report 2017.

³ FICA: FICA women's global employment market report and survey 2018.

⁴ William Hall vs London Basketball Club (UK) Limited (UKEAT/0273/19/00).

employment tribunal sent a strong message to all the sports teams, clubs and federations that professional athletes can be employees and as employees, they need to play by the rules

Rights and Duties under the Contract of Employment in Sports

Whenever there is a relationship, there exist responsibilities as well as rights. Under the employment contract, a sportsperson would have a duty to co-operate in the functioning of the club and in promoting its success and even to suggest team plans to extend smooth functioning and arrangement of games.

Sportsperson would also have a duty to work or play in good faith with the club by showing their loyalty, honesty and confidentiality. If a sportsperson discloses the teamwork or plan or strategy to the media or any other rival team, it would be termed as a breach of terms of an employment contract.

There is also a duty of a sportsperson as an employee to extend and use his skills with full competence. He or she cannot keep secret about his or her injuries which can outplay him from playing. He shall exercise reasonable caution while training or playing not to injure other players or teammates.

Similarly, an employer also owes duties towards its players. An employer's duty is to pay a reasonable remuneration to the players who are signed by them. He is also duty bound to supply safe pieces of equipment to players while playing and engage in safe training sessions which are not excessive in duration so as to endanger players' health and now during this covid pandemic, these responsibilities of following all the safety protocols have increased tremendously.

"A footballer who sits in the audience ceases to be a footballer".⁵

Moreover, an employer also owes a duty to give fair opportunities to the players to play because we must have seen in many instances that despite being capable, few players are not been given opportunities and are made to sit on the bench. In the matches where the captain of the team or the coach can take chances or risks to play a new player, then he must be allowed to showcase his/her talent and skills.

⁵ *Barlett v. The Indian Pacific Limited* [68 W.A. Indus. 492, 2508 2517 (1988)].

Restraint of Trade

Everyone has a right to work including sportspersons however, there are special instances where sports organizations' conditions on sports players restricts them to earn a living as a player.

A classic example of how employment contract work as a restraint of trade was reflected in the case of Buckley versus Tutty⁶, which was decided in the year 1971 by an Australian Court. In this case, Tutty, who was a football player, joined Leichhardt Wanderers junior league football club in 1964 to play for the Balmain club within the district of Balmain and entered into a written agreement with the said club during 1965, 1966 and 1967 playing seasons on certain earnings as a player. In 1967, he was chosen to represent Australia in a test match against New Zealand and Balmain Club wanted to keep him. He also played 1968 season with the said club but by now, he wanted to get released in order to achieve more endeavours that were offering him more play. However, his employment contract stated a rule which prohibited his release and stopped his transfer to any other club and if any other club employed him, they would have to forfeit their matches in which he played. He commenced legal proceedings when his request for transfer was refused by the club and the court upheld that his right to work was affected by the rules of the league and granted him relief from the contract with the Balmain club.

Other Hardships

Apart from this evil of restraint of trade being used wrongfully, there is also a dark side to games like football where many incidents of forced labour are reported. The agents lure young players to join some football club, sometimes even in a different nation and then once admitted, these young athletes are drugged and their passports are being confiscated too.⁷

An important aspect of a sportsperson's life is that their life is full of high risks to their physical health as they are prone to injuries on the field. Therefore, an unstable and independent contract which do not guarantee them a constant and stable future is not acceptable. There is also an element

⁶ (1971) 125 CLR 353.

⁷ The Telegraph: "The dark side of football transfers", 31st December, 2014.

of lower retirement ages due to which, sportspersons need to secure their future to ensure financial stability.

A growing hardship faced by the players is regarding maternity and paternity leave of the players. Several women athlete feel that having a child is a barrier in their career as they don't get proper maternity leave and once a gap is taken by them in their sporting career, it becomes difficult for them to rise again and bring themselves on the constant stable career. Speaking about paternity leave, it lags far behind than maternity leave. We must be knowing about the chaos created when our Indian cricket skipper Virat Kohli was granted paternity leave during the tour of India in Australia in late December, 2020. Even though, his decision was backed by the Board of Control for Cricket in India (BCCI), the said news spiraled into endless trolls on social media. In this way, players face hardships to balance their pregnancy and sports.

Indian Premier League: Whether the question of rights of professional players have been addressed by Indian courts and law?

Indian Premier League is a very popular and lucrative cricket event which goes on for around two months in India every year. In IPL, there are different teams owned by celebrities and most of them are owned by Bollywood film industry celebrities. In IPL, a team can acquire players through player auction where players sign for auction and set their base price and are bought by the franchisee who bids the highest for them and the sum that player is bought for becomes the player's salary. Here the player bought by the respective team, becomes the employee of that particular team and a relation of an employer-employee exists between the two.

Conclusion

Sports as we know is a healthy practice which has a tendency to even promote peace and harmony between nations. Feelings of the spectators are attached to sports and that is why, it's very important to contest in a healthy and positive manner.

In India, there have been various movies, TV shows and now web series which showcase the inside happenings of different types of sports. In one such web Series showcased by Amazon Prime video namely 'Inside edge', there was a display of wrongful activities occurring within a team in which team

players are involved, with or without the team owner's knowledge. It displays the extent of control on a player by a team owner who are also the employers. There is no room for discretion for the players to choose and if they go against the wishes or instructions given to them, they would have to put their career at stake.

Notably, this is not always the same since, the series just showed the extent up to where these bad things can go but in reality, the picture might be different but yes! it can be definitely presumed that team management is in a better position to control the activities of the player at least off-field.

Teams and federations therefore, must understand to take their duties seriously like any other employer would do and players too need to co-ordinate with their employers. Hence, the central question of this research stands proved stating the existence of an employer-employee relationship between a player and a franchise or a team.

In my opinion, employer-employee relationship is quite necessary as it protects the interests, rights and privileges of an employee. This should rather happen through a proper channel as in many countries, even today, there are no proper negotiation platforms for players to protect their interests. However, being a part of any club or federation can boost the players' performance as the players are obliged to perform for their respective federation and is under pressure to give their best performance but at the same time, the Federation shall not misuse this by unlawfully indulging in activities like betting or controlling the players in an excessive manner and treating them like their puppets. Control should be of such a manner that a player should be kept liberal on the field to play his or her natural game.