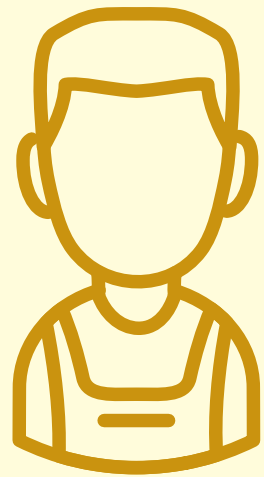


# Reference Court Cases in distinguishing employee and self-employed person/contractor

## Case 1

Mr POON was an air-conditioning worker. He suffered partial loss of vision in his left eye in an accident during the installation of an air-conditioner. The contracting company considered Mr POON a self-employed person and refused to pay compensation for his injury at work. Thus Mr POON made a claim to the court. After trial of his case by the District Court and the Court of Appeal of the High Court, Mr POON appealed to the Court of Final Appeal. The Court of Final Appeal finally decided that Mr POON was an employee of the Defendant Company and the Defendant Company had to pay him compensation for his injury at work. The grounds of judgement were as follows:



1. Since the air-conditioning business belonged to the Defendant Company, Mr POON bore no financial risks. He only received daily-rated remuneration. Whenever items had to be purchased for work purposes or travel expenses were incurred in the course of the work, he was reimbursed by the Defendant Company;
2. The Defendant Company decided which jobs should be assigned to Mr POON and paid him at the agreed daily rate, plus any overtime pay. As Mr POON was a skilled air-conditioning worker, he did not require supervision over the manner of carrying out the work;
3. The Defendant Company supplied most of the equipment used;
4. Mr POON personally did the work assigned to him. He did not hire anyone to help;
5. The fact that Mr POON had worked for the Defendant Company and other companies on a casual basis at the same time did not affect his right to compensation under the law;
6. Although Mr POON labelled himself a self-employed person for the purposes of the Mandatory Provident Fund, the objective facts strongly supported that there was an employer-employee relationship between the two parties. The Defendant Company must fulfil its legal obligations.

## Case 2

Mr. HO engaged with the Defendant Company to do renovation and repairing work in its factory. The Defendant Company paid Mr. HO miscellaneous fee in advance, and paid him “renovation fee” by cheque. After Mr. HO had worked for half a month, the Defendant Company owed rent and so the landlord closed the factory and prohibited entry of relevant personnels into it. Mr. HO then lodged a claim against the Defendant Company for wages in arrears at the Labour Tribunal and the claim was allowed. The Defendant Company appealed to the High Court, stating that Mr. HO was a self-employed person and there was no agreement on remuneration before he commenced work. Having taken all relevant



factors into consideration, the High Court ruled that Mr. HO was an employee and upheld the judgement of wages in arrears in favour of Mr. HO. The grounds of judgement were as follows:

1. Mr. HO was employed with monthly salary to do repairing work. He did not submit any quotation and invoice, or get remuneration from the Defendant Company for individual item. The High Court also did not accept the Defendant Company's allegation that there was no prior mutual agreement on the remuneration;
2. By arranging Mr. HO how to work daily, the Defendant Company controlled the work of Mr. HO;
3. The Defendant Company paid in advance miscellaneous fees to Mr. HO, rather than paying him reimbursement after he had bought the materials.

<Case No.: HCLA16/2019>

## Case 3

Mr. LO worked as a hair stylist assistant in the salon owned by the three Defendants. On termination, he claimed for payment in lieu of notice, annual leave pay, etc. The Labour Tribunal found that the Defendants should pay the items. The Defendants appealed to the High Court against the finding, alleging that Mr. LO was a self-employed person and thus not entitled to the rights and benefits under the EO.

Having taken all relevant factors into consideration, the High Court dismissed the appeal and ruled that Mr. LO was an employee. The grounds of judgement were as follows:



1. The Defendants had control over the work of Mr. LO. For example, every day Mr. LO had to clock-in and clock-out, and the records showed that he went to work and off work on time; Mr. LO had to notify the Defendants for his absence due to sickness;
2. Mr. LO was not allowed to hire his own helpers;
3. The Defendants provided the tools and materials used. Mr. LO did not have any cost of investment, management or operation, and did not bear any financial risk;
4. Even though Mr. LO was labelled as a self-employed person in the written agreement signed by both parties, that the Defendants had neither arranged him MPF nor filed tax return for him as an employer, the court opined that such an agreement could not rule out the employer-employee relationship should this relationship existed as indicated by the circumstantial evidence.



<Case No.: HCLA43/2015 >