
(1976) 04 AP CK 0012
In the Andhra Pradesh High Court

Andhra Pradesh State Electricity Board	APPELLANT
Vs	
Employees" State Insurance Corporation	RESPONDENT

Date of Decision : 05-04-1976

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1
Employees State Insurance Act, 1948 — Section 2, 39, 42, 46, 47

Citation : (1977) 1 LLJ 54

Hon'ble Judges : Punneyya, J;Chinnappa Reddi, J

Bench : Division Bench

Judgement

Punneyya, J.—This appeal is directed against the order passed by the Judge, Employees" Insurance Court, Hyderabad in E.I. case No. 9 of 1972. Andhra Pradesh State Electricity Board who is the petitioner in the lower Court is the appellant herein.

2. The Employees" State Insurance Corporation. Hyderabad respondent, demanded the appellant to deposit a sum of Rs. 646.80 towards employer"s special contribution and a sum of Rs. 3,452.84 towards employees" contribution for the period from I. 10.1968 to 31-3-1971. But the appellant failed to deposit the same and hence the respondent-Corporation moved the District Collector, Karimnagar to recover these amounts under the Revenue Recovery Act as arrears of land revenue.

3. The District Collector, therefore, issued a show-cause notice on 26-4-1972 to the appellant calling upon them to explain as to why the property of the appellant should be attached for the realisation of the said amounts. The appellant submitted an explanation stating that the workers for whose sake the demand was made towards the aforesaid contributions are casual workers and hence they cannot avail of any of these benefits and the demand is, therefore, illegal.

4. As against this contention, the respondent-Corporation contended in its counter that the benefits envisaged under the Act enured to the casual labourers

also since they would come within the purview of Section 2(9) of the Employees' State Insurance Act, 1948 and the demand is, therefore, lawful and valid.

5. The learned Judge took into consideration the provisions of Section 2(9) and also a decision of a single Judge of this Court in C.M.A. No. 359, 1967 dated 18.3.1969 in which it was held that Section 2(9) of the Act is comprehensive and does not warrant the inference that a person cannot be deemed to be an employee unless his services are engaged for not less than a particular period and Section 39(4) of the Act visualises the possibility of employment even for less than a week when it lays down among other things that where an employee is employed for part of a week the contributions shall fall due on such day as may be specified in the regulations and finally held that the persons employed even for a short period would be entitled to the benefits of the Chapter V of the Act based on the contribution made or in respect of such employees. In the light of this decision rejected the contention held that the casual the learned Judge of the appellant and workers were also entitled to the benefits provided by the Act.

6. Aggrieved with the said order, the Electricity Board which is the petitioner before the Tribunal preferred this appeal.

7. Our learned brother A.V. Krishna Rao, J., after hearing the arguments addressed by Shri Anantha Babu, learned Counsel for the appellant, felt that the question raised are "of sufficient importance and deserve consideration of Division Bench. He, therefore, wanted the matter to be referred to a Bench for authoritative pronouncement on these questions. Thus the matter came before us.

8. Shri Anantha Babu, the learned Counsel for the appellant, contends that the casual labourers employed by the appellant-board do not come under the definition of "employee" u/s 2(9) of the Employees' State Insurance Act. According to him, for the employee who seeks to avail the benefits given by the Act should be a regular/labourer but not casual labourer, since the continuity of service is an essential prerequisite which is absent in the case of a casual labourer. He also contends that the scope, Scheme and purpose of the Act make it abundantly clear that casual employees are excluded from the definition of the employee. In support of his contention be"" relied upon the decision of the Supreme Court in Regional Provident Fund Commissioner, A.P. v. T.S. Hari Nat and (1972) F.L.R. (22) S.C. 260, and a decision of this Court in Nazeena Traders (P) Ltd. and Others Vs. Regional Provident Fund Commissioner, Hyderabad and Others, and also a decision of the Madras High Court in E.S.J Corporation v. Gnanambika Mills, 1974 Lab. I.C. 798.

9. The Supreme Court's decision cited \\ above deals with casual labourers with " reference to Section 1(3)(a) and (b) of the Employees' Provident Funds Act, 1952. Their Lordships held that casual labourers do not, come within the definition of Section 1(3)(b) of the Employees' Provident Funds Act. According to them, the word "employment" should be construed as employment in the regular

course of business of the establishment and such employment obviously, would not include employment of a persons for a short period on account some passing necessity or some temporary] emergency beyond the control of the company. The purpose and scheme of the Act demanded a continuity of employment and hence excluded casual labourers.

10. The decision of the Andhra Pradesh High Court in *Mazeena Traders Limited v. Regional Provident Fund Commissioner* (supra) also deals with Employees' Provident Funds Act.

11. The views expressed in these decisions about casual labourers are necessarily restricted to the Employees' Provident Funds Act. In view of the purpose and scheme of the Act and the nature and benefits conferred by it, it is clear that the casual workers cannot come within the purview of that Act. But under the Employees' State Insurance Act, the definition of I the expression "employee" in Section 2(9) of the Act is not only very wide but the purpose and scheme of the Act "do not appear to inhibit the inclusion of casual workers among those entitled to the benefits of the Act.

12. The word "employee" is defined in Section 2(9) as follows:

2(9): "Employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applied and?

(i) Who is directly employed by the principal employer of any work of, or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) x x x x x x

The definition is very comprehensive and wide enough to embrace the casual labourer into its fold.

13. The entire argument that the Act excludes payment of contribution in respect of casual labourers collapses in view of Clause 4 of Section 39 and Clause 3 of Section 42. Clause 4 of Section 39 provides that the contribution payable" in respect of each week shall ordinarily fall due on the last day of the week and where an employee in employed for part of the week, the contribution shall fall due on such days, as may be specified in the regulations. This clause, therefore, makes it abundantly clear, that the first limb of the provision deals, with the payment of contribution in respect of a regular labourer while the second limb deals with the casual labourer who is employed even for part of the week. It makes it further clear that in the case of a regular labourer, the contribution payable in respect of each week shall ordinarily fall due on the last day of the week and in respect of the casual labourer, the contribution shall fall due on such day as may be specified in the regulations.

14. Clause (3) of Section 42 also envisages t the employer shall be liable to pay

both the employer's contribution and the employees' contribution even in respect of the employee who is employed for a portion of the week. But the employer is given the right to recover from such an employee, the employee's contribution. Section 42(3) reads as follows:

42 (1) x x x (2) x x x (3) Where wages are payable to an employee for a portion of the week the employer shall be liable to pay both the employer's contribution and the employee's contribution for the week in full, but shall be entitled to recover from the employee the employee's contribution.

15. Clause (3) of Section 42 clearly shows that even if a worker is employed for a few days of a week, the employer shall be liable to pay both the employer's as well as the employee's contribution for the week in full. The employer cannot refuse to pay the contribution on the mere ground that he employed the worker for a few days, but not even for a week and that the employee is only a casual worker.

16. Both Clause (4) of Section 39 and Clause (3) of Section 42 establish beyond doubt that a casual worker is entitled to payment of contribution by the employer towards employer's contribution as well as employee contribution, though he is employed even for a day or two or a few days in a week. The effect of these two clauses is emphatic enough to declare that the word "employee" as defined u/s 2(9) of the Act includes casual worker also.

17. It is true that the Division Bench of the Madras High Court took a different view in *E.S.I. Corporation v. Gnanambika Mills* (supra). The learned Judges were of the view that casual labourer is not covered by the definition given u/s 2(9) of the Act in view of the provisions of Sections 39(1), 47(2) and 2(5) which, according to them, clearly show that casual employees cannot be compelled to insure and pay contributions and are excluded from the purview of the Act.

18. With great respect for the reasons that follow and given above, we are unable to persuade ourselves to conform to this view. Section 47, of course, prescribes conditions for claiming sickness benefit. Under this Section, a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period, if during the corresponding contribution period, weekly contributions in respect of him were payable for not less than 13 weeks. "Benefit period" as defined under Clause (2) of Section 2 (means, such period, being not less than 25 but not exceeding 27 consecutive weeks or six consecutive months corresponding to the contribution period, as may be specified under Clause (5) of Section 2 as such period, being not less than 25 weeks but not exceeding 27 consecutive weeks or six consecutive months, as may be specified in the regulations provided that in the case of the first contribution period a longer or shorter period may be specified by or under regulations. Similar qualifications are prescribed even for maternity benefit as could be seen from Section 50 of the Act.

19. "Thus it is clear that if a casual, labourer is employed for over a contribution period, he is entitled to sickness or maternity benefit, if the sickness or maternity

occurs during the benefit period, though it" may not be available to him if he is employed for a shorter period.-Merely because some of the benefits of the Act are not available to some casual labourers, it cannot be said that the casual labourers are not entitled to have the benefits of the Act as expressed by the learned Judges of the Madras High Court in the above cited decision. We also notice here that the Madras High Court did not take into account the circumstance that u/s 51 the Act, employees are entitled to "disablement benefit" as provided in Section 46(1)(c) without reference to any benefit period or the contribution period. "Disablement Benefit" is given to employees suffering "employment injury" as defined in Section 2(8). "Employment injury" as defined includes a personal injury caused by accident in the accident to occur on the first day of employment either to casual or to regular employees causing him disablement. Then the disablement benefit can be extended to him without reference to the benefit period or to contribution period. This is again an indication that the Act applies to casual labourers as well.

20. The Act being a beneficial piece of I social security legislation in the interest of labourers employed in the factory, provisions of the Act will have to be construed with a view to promote the scheme for the benefit of all the labourers.

21. For the aforesaid reasons we hold that Section 2(9) includes a casual worker also" and he is entitled to the benefits provided course of employment. It is possible for an in the Act. It is in this view that we find that the decision of the single Judge of this Court in C.M.A. No. 359, 1967 is entirely in conformity with the provisions of the Act. We, therefore, find no merits in the appeal and it is accordingly dismissed with costs.