
(1977) 02 AP CK 0002
In the Andhra Pradesh High Court

A.P. State Electricity Board

APPELLANT

Vs

E.S.I.C.

RESPONDENT

Date of Decision : 09-02-1977

Acts Referred:

Employees State Insurance Act, 1948 — Section 1, 2

Citation : (1978) 1 LLJ 44

Hon'ble Judges : Punneya, J;Alladi Kuppuswami, J

Bench : Division Bench

Judgement

Alladi Kuppuswami, J.—The common question for consideration in these two appeals is whether the Meter Relay Transformer Establishment of the Andhra Pradesh State Electricity Board at Guduru is a factory within the meaning of Section 2(12) of the Employees' State Insurance (Amendment) Act, 1975, referred to in this judgment as "the Act" and whether the employees' contribution and employers' special contribution can be levied against them by the Employees' State Insurance Corporation.

2. The facts found by the Employees' Insurance Court in cases Nos. 4 and 5 of 1975, out of which these appeals arise, which are binding on this Court in the appeals before us are as follows:

There are twenty persons working in the establishment including one junior engineer. If the junior engineer is also taken into consideration, the establishment would be a factory within the meaning of Section 2(12) of the Act. But if he is excluded, the establishment would not be a factory. It is admitted that the salary paid to the junior engineer exceeds Rs. 500 per month. It is the contention of the appellant, the Andhra Pradesh State Electricity Board, that as his salary exceeds Rs. 500 he should not be taken into account in computing the twenty persons employed for wages referred to in Section 2(12),

3. In order to appreciate this it is necessary to set out the relevant provisions of the Act. Section 2(12) defines "factory" in the following terms:

"factory" means any premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952) or a railway running shed.

"Employee" is defined u/s 2(9) of the Act and the relevant portion of the sub-section may be set out:

employee means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and.

(i)...

(ii)...

(iii)...

but does not include...

(a)...

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month.

The expression "wages" is defined u/s 2(22) as meaning the "remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied were fulfilled", etc.

4. It is seen from the definition of "factory" u/s 2(12) that what is required is that twenty or more persons are employed or were employed for wages on any day of the preceding twelve months. It is submitted by Sri Anantha Babu that as the expression "wages" is defined in Section 2(22) as remuneration paid or payable in cash to an employee, it would follow that the "persons employed for wages" referred to in Section 2(12) should be "employees" within the meaning of Section 2(9). As the junior engineer cannot be an employee within the meaning of that sub-section as his salary is more than Rs. 500 he should be excluded while determining the number of persons "employed for wages". In other words, the substance of his argument is that the expression "person employed for wages" occurring in Section 2(12) has the same meaning as "employee" in Section 2(9). We are unable to agree with this contention. In our view it is not proper to substitute the entire definition clause in regard to wages in Sub-section 2(12) and then say that wages are only those which are paid to an employee and, therefore, the persons employed in the precincts must be employees. The expression "wages" u/s 2(12) must be understood in a wider sense as meaning any remuneration paid to any person, who is employed in the factory and cannot be restricted only to the remuneration paid to the employees who come within the definition of Section 2(9). Though whenever there is an interpretation clause the meaning of any word occurring in a statute would

normally be construed, according to that clause, it is not necessary that the meaning of every word should in every case be defined or restricted only to the meaning given to it by the interpretation clause. As pointed out in Craies on Statute Law Seventh Edition, at page 216 the interpretation clause is not to be taken as substituting one set of words for another or as strictly defining what the meaning of a term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances required that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration. We are of the view that the expression "wages" u/s 1(12) of the Act cannot be construed literally, as meaning only wages as defined u/s 2(12), viz., remuneration paid to employees but would mean wages to any person employed in the precincts of the establishment. There is no warrant for holding that twenty persons employed in the factory referred to in Section 2(12) should be employees within the meaning of Section 2(9) of the Act.

5. If really the Legislature desired that in computing the number twenty referred to in Section 2(12) only employees should be taken into consideration it could have easily used the expression "where twenty or more employees are working in the precincts." But it has deliberately used the expression "whereon twenty or more persons are employed or were employed for wages." It is therefore, clear to us on a plain reading of Section 2(12) of the Act that in computing the number twenty all persons employed for wages should be taken into consideration and not merely those who strictly fall within the definition of employees u/s 2(9) of the Act.

6. It was argued that the Act is merely intended to benefit employees and it would not have been the intention of the Legislature to take into account persons other than employees while determining that a particular factory is an establishment or not. We are not impressed with this argument. It is true that the Act is intended to confer benefits on employees of a particular establishment. But there is nothing preventing the Legislature from defining the factory with reference to persons other than employees. By doing so no benefit is conferred on persons other than employees. Even if the premises is a factory, the further question would still remain whether the benefits conferred by the Act can be availed of by the persons who work in the premises. In order to determine that question it would be necessary to decide whether those persons are employees or not. The mere circumstances that the Act applies to an establishment would not necessarily mean that all the benefits conferred by the Act would be given to each and every person who is employed for wages in that establishment. The Act would apply to the establishment because twenty or more persons are working, yet the benefits conferred are available only to such of those who are employees

within the meaning of the Act.

7. This view of ours derives support from the decision of various High Courts. In *Bank Silver Company Vs. The Employees' State Insurance Corporation, Bombay*, it was held that Section 2(12) of the Act defines a "factory" not by reference to the number of "employees" who work in the factory but by reference to "persons" who work in the factory and the language used in the said clause shows that the sole test which must be applied for determining whether an establishment is a factory or not, is whether twenty or more "persons" are working in the factory and whether a manufacturing process is being carried on with the aid of power in any part of the establishment. It may be stated here that at the time when that decision was rendered Section 2(12) defined the factory as meaning any premises including the precincts thereof whereon twenty or more persons are working or were working. These words were substituted by Act XLIV of 1966 by the words "are employed or were employed for wages". It was held in the decision of the Bombay High Court referred to above that the persons working in factory need not be employees within the meaning of Section 2(9) of the Act. Though the Act is meant for the benefit of the employees, the language of Section 2(12) would indicate that in order to satisfy the definition of "factory" it is sufficient if twenty or more persons are working in the factory and it is not necessary that all the twenty persons should be employees. Sri Anantha Babu distinguishes this decision on the ground that the expression used u/s 2(12) before the amendment was "number of persons working" whereas after the amendment the expression used is "whereon twenty or more persons are employed or were employed for wages". It may be by reason of the amendment the Legislature intended only to take into account those who were employed for wages and not merely those who worked without any wages or remuneration. But as far as the question before us is concerned, we do not think that the amendment makes any difference.

8 In *Employees' State Insurance Corporation v. M.A.H. Siddique* 1965 I L.L.J 573 : AIR 1965 Mys. 71, it was held that Section 2(12) does not speak of persons working for wages as such. So long as the number of persons working on the premises is 20 or more, the premises is "factory" falling within the definition, it being immaterial whether these persons so working are paid wages or not.

9. In *Chanan Singh Proprietor Chanan Singh and Sons, Amritsar Vs. Regional Director, Employees' State Insurance Corporation, Amritsar*, it was held that a principal employer being a person who actively works on the premises must be included in the figure of twenty referred to in Section 2(12) of the Act. It was pointed out that the expression "persons" was deliberately used instead of "employees" in the definition of factory and hence even persons who are not employees can be taken into consideration as long as they were working in the premises.

10. In *Employees' State Insurance Corporation Vs. Pioneer Laundry*, the decision

of the Bombay High Court in Bank Silver Company Vs. The Employees' State Insurance Corporation, Bombay, , was referred to with approval and it was stated that the sole test as to whether the establishment is a factory or not is whether twenty or more persons were working there.

11. In the result, we agree with the Court below that the establishment concerned, viz., Meter Relay Transformer Establishment of the Appellant Board at Gudur is a factory within the meaning of Section 2(12) of the Act and was rightly required to pay the employees' contributions and employers' special contribution. The appeals are dismissed, but in the circumstances, without costs.