

(1972) 04 MAD CK 0007

In the Madras High Court

Case No : Criminal R.C. No. 733 of 1970

C.S.Natarajan

APPELLANT

Vs

Inspector of factories, Coimbatore

RESPONDENT

Date of Decision : 07-04-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(s), 25(c)

Citation : (1972) LW(Cri) 165

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : V. P. Raman, for M/s. King and Partridge, for the Appellant; K. Alagumalai, for the Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—Thiru C. S. Natarajan, the Petitioner herein, is the Manager of the A. C. C. Cements, Madukkarai, a factory registered

under the Factories Act, 1948. For non-payment of wages for the national and festival holidays to as many as 300 workers, in the year 1968, he

as the Manager and employer of this concern, was prosecuted by the Inspector of Factories, for an offence u/s 8 read with Sections 3 and 5 of the

Madras Industrial Establishments (National and Festival Holidays) Act, 1958 (herein after called the Act). The Petitioner's defence was that casual

workers are not entitled to any of the above holidays and that as such they are not entitled to the wages for those days. Not accepting his

contentions, the Additional First Class Magistrate, Coimbatore, convicted and sentenced him to pay a fine of Rs. 25. The correctness of this

conviction is now canvassed in this revision.

2. Under S. 3 of the Act, every worker should be granted three national holidays,

on the 26th January, 15th August and 2nd October, and also a minimum of five festival holidays with wages. S. 5 of the Act states that for each of the holidays allowed u/s 3, the employee should be paid wages.

There is only one condition which an employee should satisfy, in order that he may be eligible for the five festival holidays and that is, he should

have worked for a total period of thirty days within a period of 90 days prior to the festival holiday. Ex. P-1 list shows the five festival holidays

declared by this Management for (1) the Malayalee Hindus. (2) the Non Malayalee Hindus, (3) the Christians and (4) the Muslims. P. W. 1, the

Superintending Inspector of Factories, inspected this factory on 7th August, 1969. Verification of the records disclosed non-payment of wages for

the national and festival holidays to more than 300 casual workers. Those workers were eligible for these holidays with wages, because every one

of them had worked for more than 30 days during a period of 90 days before a particular holiday. Ex. P-7, show cause notice, was issued. By Ex.

P-9 he contended as below:

The casual labourers, whose names are in the registers maintained by the firm, would come daily and wait at the gate looking for employment.

They would be employed if there was any work of a casual nature available on that particular day. This was done by rotation, so that each worker

may get work on certain days. Casual labourers, thus employed on each day, will cease to be employed, at the close of the shift for which they

were employed, with the result they would not be in the employment of the firm till they get the chance for work next. Therefore, they are not

permanent employees entitled to the benefits of the national and festival holidays with wages.

3. The short point for determination is as to whether these 300 persons are casual labourers as contended by the Petitioner, and if so, whether they

are not entitled to the national and festival holidays with wages, like the permanent employees.

The Act was enacted to provide for the grant of national and festival holidays to persons employed in industrial establishments in the State of

Madras. "Employee", as defined in Clause (b) of S. 2 of this Act, means:

(i) any person (including an apprentice) employed in any industrial establishment, to do any skilled or unskilled, manual supervisory, technical or

clerical, or work for hire or for reward, whether the terms of employment be express or implied;

(ii) any other person employed in any industrial establishment whom the Government may, by notification, declare to be an employee for the purposes of this Act.

In defining the word "employee" the legislature has made no distinction and it is in the widest possible terms so as to include even casual workers.

The definition of an employee in this Act is the same as the definition of "workman" in S. 2(s) of the Industrial Disputes Act. From the language of

this definition, there is no room to incorporate into it the idea that only a permanent employee can be construed to be a workman. In other words,

there is no room to think that a casual workman cannot be construed to come within the scope of the definition of "workman" as defined in S. 2(s):

vide the Pilot Pen Company (India) Private Limited v. The Presiding Officer, Additional Labour Court and Anr. (1971) 1 L.L.J. 241 and Elumalai

Vs. Management of Simplex Concrete Piles (India) Ltd. and Another, . If the legislature wants to exclude certain benefits to these casual labourers,

it does so expressly as in the case of S. 25(c) of the Industrial Disputes Act, which excludes badly workmen from getting wages or compensation

on the days when they are not provided with work. There is no such exclusion in this Act, for casual workers 50 casual workers-came within, the

definition of employees, in the Act.

4. The admitted case of the accused is that the names of all these labourers are found in the registers maintained by them. The defence contention is

that they get work for the particular shift if there is work and if there is no work, they are asked to leave the place. It is urged that during the period

when they are not on work, they cannot be said to be in the employment of the firm and that during that period they will be at liberty to get

themselves employed in any other concern during those hours. This applies to the permanent employees also. Persons who are engaged in one shift

are out of employment in the next shift. On that score, it cannot be said that they are not under the employment of this firm. P.W. 2 is one of the

casual workers employed in this factory for the last over seven years. He states that casual labourers would be taken for work in all the three shifts

every day and that they do work along with the permanent workers as directed

by the Management. These workers also get the benefit of the E.S.I. Scheme. Ex. P. 11 is the E.S.I. Card issued to P.W. 2. He further says that they also get bonus like the permanent workers in the month of Panguni every year. They also get the same dearness allowance as the permanent workers. D.W. 1, the Engineer, in this factory, deposes that casual workers are engaged daily for loading and unloading of wagons, cleaning etc., They are classified as unskilled workers. Their names are entered in the Register. Permanent workers are given cards and these workers are given tokens. He admits that some of them are doing work in this factory for over seven years in this manner and that they are paid once in a week. He further admits that in the year 1968 they were given wages for one national holiday and two festival holidays, but he adds that it was by mistake. Thus, these casual workers go to the factory daily. Their names are in the Registers. They are engaged by turns in the different shifts. They get the benefits of the E.S.I. scheme. They are given tokens. The same is the work done by the permanent workers. There is nothing in the Act even remotely to suggest that casual workers employed in any factory are excluded from the purview of this Act. The conviction is correct and the sentence is not excessive. Both are confirmed. The revision fails and the same is dismissed.