

(1974) 02 MAD CK 0018
In the Madras High Court

Employees' State Insurance Corporation	APPELLANT
Vs	
Gnanambikai Mills Limited	RESPONDENT

Date of Decision : 01-02-1974

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 38, 39, 47

Citation : (1973) ILR (Mad) 1 : (1974) 2 LLJ 530

Hon'ble Judges : K. Veeraswami, C.J.;Raghavan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—This is an appeal from an order of Ramamurti, J., dismissing a civil miscellaneous appeal under the provisions of the

Employees' State Insurance Act, 1948. The learned Judge was of the view that casual employees were not within the purview of the Act. The

correctness of this view is the only question in the appeal. The respondent is a limited liability company carrying on business in the manufacture and

sale of cotton yarn. In the course of infection of its books the Insurance Inspector found a large debit of about Rs. 9,000 which represented wages

paid to certain employees. It is not in dispute and it has never been at any stage that these employees were casual employees engaged for

whitewashing and effecting repairs to the factory buildings. The Regional Director issued a demand on the respondent on March 19, 1962 that the

employer's contribution in respect of these workers should be paid. Those are all the facts which we know from the record.

2. The term "employee" as defined by Section 2(9) read by itself appears to us to be wide enough to cover casual employees as well. A person

will be an employee, if he is employed for wages in or in connection with the work of a factory or establishment which is governed by the Act, or if

he is directly employed by the principal employer on any work of or incidental or preliminary to or Connected with the work of the factory or

establishment, or if he is employed by or through an immediate employer on the premises of the factory or establishment or if his services are

temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered

into a contract of service. The term also includes any person employed for wages connected with the administration of the factory or establishment

or any part, department or branch thereof or with the purchase of raw materials for or the distribution or sale of the products of the factory or

establishment. The definition also expressly excludes certain categories of persons. The meaning of ""factory"" has also been set out in the Act. The

two expressions ""employee"" and ""factory"" read together and in the light of each other, lend themselves to the view which is urged for the appellant

the Employees' State Insurance Corporation, that casual employees too would be within the purview of the term ""employee"".

3. But, having regard to the purpose of the Act and the other specific provisions therein, we are inclined to think that the Act is not intended to

apply to casual employees. The Act provides for certain benefits to employees in case of sickness, maternity and employment injury and certain

other matters. The provisions in Chapter II deal with setting up of Employees' State Insurance Corporation and its administration and Chapter III,

with finance and audit of the Corporation.

4. Section 38 in Chapter IV dealing with contribution, says that subject to the provisions of the Act, all employees in factories or establishments to

which the Act applies shall be insured in the manner provided by the Act, all employees in factories or establishments to which the Act applies shall

be insured in the manner provided by the Act. The contribution payable u/s 39(1) is of two-fold liability that is to say both the employer as well as

the employee are liable to pay contribution to the Corporation. The contribution so made is the price for the cover of the employees concerned in

respect of sickness, maternity, employment injury and other matters. We understand from Section 47 that sickness benefit will not be available to

the casual employees in question because under that provision a person shall be qualified to claim benefit for sickness during any benefit period if

during the corresponding contribution period weekly contributions in respect of him were payable for not less than 30 weeks. The proviso also

seems to limit the availability of benefit only in certain circumstances. "Benefit period" as defined 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 in the regulations

Contribution period" is also defined as such period being not less than 25 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

the regulations.

5. In view of these provisions in particular we do not see how casual employees who were engaged only for a day or two or even more but only

on a casual basis can be compelled to insure and pay contribution if that will not entitle them to sickness benefit. The whole object of the Act is to

extend benefits and one of them perhaps most important one is cover in respect of sickness. Not merely this supposing a person was casually

employed in a factory just for a day could it be the intention of the Act that only on account of that he is bound to insure himself and the employer

and employee should make their respective contributions? Could it be also the intention of the Act that in such a case even though the period of

employment is only one day or on casual basis, the casual employee because he has insured himself and made contribution for a day would be

entitled to sickness benefit, maternity benefit and other benefits and if so, for how long?

6. It seems to us that taking a practical view of the question, it does not appear to be the intention of the Act and casual employees should be

brought within its pure view. The contribution that the employer and the employee make which goes to make up the fund is in the nature of a

consideration for the benefits contemplated under the Act and to be derived by those entitled to them. The contribution necessarily has a relation to

the benefits derived. It does not appear to be the intention of the Act that, however small the contribution made by a casual employee may be,

nevertheless the fund should be devoted for extending the benefits to him. If the intention was to bring any such casual employee within the purview

of the Act the Act would have clearly mentioned it.

7. On a perusal of the several sections of the Act, the intendment and the scheme thereof, we are of the view, agreeing with Ramamurti, J., that

casual employees are not within the purview of the Act. The appeal is dismissed with costs.