
(1963) 01 MAD CK 0019
In the Madras High Court
Case No : A.A.O. No. 100 of 1961

K. Thiagarajan Chettiar

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 10-01-1963

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 76, 78, 96

Citation : AIR 1963 Mad 361 : (1963) 7 FLR 169 : (1963) 2 LLJ 207 : (1963) 76 LW 851 : (1963) 2 MLJ 77

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Venkataraman, J

Bench : Division Bench

Advocate : R. Viswanathan, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramchandra Iyer, C.J.—This is an appeal by an employer u/s 82(2) of the Employees' State Insurance Act, 1948, against an order

passed by the Employees Insurance court (District Judge, Madurai) directing him to pay contribution in respect of certain persons. The appellant

owns a textile mill in Madurai and the employees concerned in the case are gardeners, (sic) workers, office attender, watchmen etc. The

substantial question before the lower Court was whether these persons were employees within the meaning of the Employees State Insurance Act,

so as to oblige the employer to contribute for their provident fund. That question which has been answered by the lower Court against the

appellant depends upon the construction of the term "employee" on Section 2(9) of the Act, which runs thus :

Employee means any person employed for wages or in connection with the work of a factory or establishment to which this Act applies and (i)

who 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 whether such work is done by the employee in the factory or establishment or else where; (rest of the section omitted as not necessary)".

The appellant is the principal employer and it is not disputed that the textile mill in respect of which the aforesaid employees are employed, is a factory. It is, however, contended that those persons have nothing to do with the actual working of the factory and that therefore they would not come within the term employee as defined in the Act. We are unable to accept this contention. It has been held in *Employees State Insurance Corporation, Madras Vs. S.M. Sriramulu Naidu*, that the term "employee" is of wide connotation and would include within its scope every clerical labourer and part-time worker. Thus an employee as defined in the section will not be confined to an actual worker in the manufacturing plant. That this is so is plain from the section which says that the employee is a person who is employed in any work, incidental or preliminary to or connected with the work of the factory or establishment.

In *Employees' State Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others*, a limitation was imposed on the meaning of the term. It was there held that the words "incidental or preliminary to" in the definition have to be read in conjunction with the words, with the work of the factory so that the work done by the employees in question should be the "work of or incidental or preliminary to the work of the factory". Even, adopting that construction, it cannot be disputed that for the proper functioning of the factory there should be builders or persons who maintain buildings. Equally so in regard to watchmen office boy and gardeners. The factory maintains a garden evidently for the purpose of keeping the factory in healthy surroundings. There can be little doubt that the maintenance of the garden would be conducive to the health of its manual workers and would also enhance their efficiency and health. It can, therefore, be said that all the workers in the present case would be employees coming within the definition of the term in the Act. In that view the order of the learned Judge directing the appellant to pay contribution is fully justified.

2. Mr. R. Viswanathan appearing for the appellant has advanced another point which is more or less of a technical character. He claims that the application for contribution should have been rejected by the lower court as it was filed more than a year after the cause of action accrued. It is not disputed that the application was filed more than a year after the cause of action accrued; but the explanation for the delay was that the respondent was not aware of the employment of these workers as they were not disclosed in the statutory returns submitted by the principal employer. This fact was mentioned in an application filed by the respondent along with the application for contribution. Under Rule 17 of the Rules the Employees Insurance Court has ample powers to excuse the delay and we have no doubt that in the circumstances of the case there was sufficient justification for excusing the delay. The lower court has found that the cause of action did not arise till one year after the application was filed. It is, however, unnecessary for the purpose of this appeal to go into the question as we are satisfied that the delay, if any, can be condoned there being sufficient reason therefor. The appeal fails and is dismissed with costs.