(1978) 01 MAD CK 0029

In the Madras High Court

Case No : Letters Patent Appeal No. 62 of 1975

Regional Director, Employees' State Insurance Corporation APPELLANT

Vs

Freedom Press RESPONDENT

Date of Decision : 17-01-1978

Acts Referred:
Employees State Insurance Act, 1948 — Section 1(4), 2(12), 2(9)

Citation : (1978) ILR (Mad) 122

Hon'ble Judges : P. Govindan Nair, C.J;V. Ramaswami, J

Bench : Division Bench

Advocate : Central Government Standing, for the Appellant; T.R. Srinivasan and K. Ramamurthy, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, C.J.—The question raised in this appeal is whether a fair interpretation of the word factory as defined in Section 2(12) of the Employees'' State Insurance Act, 1948, (herein after referred to as the Act) would enable the Court to include casual employees working in a factory also for making up the number twenty mentioned in that definition. The view that has been taken in the judgment under appeal is that casual employees cannot be counted.

2. Factory is defined in Section 2(12) of the Act thus:

Factory means any premises including the precincts thereof whereon twenty or more persons are employed or where 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 or a railway running shed.

The above definition is important because the Act as is seen from Section 1(4) would apply only to factories. In E.S.I. Corporation v. Gnanambikai Mills Ltd. ILR (1973) 3 Mad. 1 this Court has taken the view that casual employees will not be included within the meaning of the word employee as defined in Section 2(9) of the Act. The word is defined thus:

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 applies and (a) 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 elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment, or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or 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;

and includes any person employed for wages on any work 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;

3. We respectfully agree with the view expressed in the said decision. No decision of this Court or that of the Supreme Court taking a contrary view has been brought to our notice. Our attention was drawn to the decision of this Court in Dhala Tanning Co. v. E.S.J. ILR (1973) 3 Mad 382. In that decision, there was an expression of opinion by way of obiter at page 404 as follows:

That would prime facie show that even a casual labourer has to be counted in order to determine whether a particular premises is a factory as defined under the Act or not. But whether a casual worker is entitled to insurance cover under the Act may be a different question.

In Gnanambikai Mills v. Employees State Insurance Corporation (1970) 2 L.L.J. 233. Ramamurti J., has held that the provisions of the Act would not apply to casual workers. But we think it is not necessary to go into this aspect of the matter because from the materials on record, we have to proceed en the footing that there were really 20 permanent workers in the premises in question.

In view of the fact that the Court proceeded on the footing that there were twenty permanent workers in the premises in question the question that we are considering did not arise for decision in the case referred to above and the observation therein therefore cannot affect the decision in Letter Patent Appeal No. .7 of 1970 which incidentally is a judgment confirming the view expressed in Gnanambikai Mills v. Employees State Insurance Corporation (1970) 2 L.L.J. 233.

4. Our attention was drawn to the decision of the Bombay High Court in Bank Silver Company Vs. The Employees'' State Insurance Corporation, Bombay, , wherein Chandrachud, J. on the basis of the definition of the term factory in Section 2(12) as it then stood took the view that even partners who were working in the factory would have to be counted for determining the number of persons required in Section 2(12) of the Act. At that time, the definition of the word factory included persons working and not persons employed. There is a lot of difference between these two expressions. Any person who is working whether he is an employee or not will come within the expression persons working. Apart from that, he may work for wages or he may work without wages. In fact the decision to which our attention was drawn in E.S.I. Corpn. v. M.A.H. Siddique AIR 1965 Mys. 71, has taken this view that persons working need not be persons working for wages. These decisions have no bearing on the question which has arisen before us, because we have to consider the expression persons employed and not persons working. We have to necessarily refer to the definition of the expression employee because both Section 2(12) and Section 2(9) talk of persons employed for wages, and the definition of the term employee says persons employed for wages. We therefore find it difficult to give the expression persons employed in Section 2(12), a meaning different from the definition of the term employe in Section 2(9) of the Act. Unless there are twenty or more persons employed in a factory, the Act would not apply to that factory. In that view, this appeal must fail. Accordingly we dismiss the appeal with costs.