

(1976) 10 KAR CK 0002
In the Karnataka High Court
Case No : Misc. First Appeal No. 77 of 1974

Regional Director, E.S.I.C., Bangalore

APPELLANT

Vs

Davangere Cotton Mills

RESPONDENT

Date of Decision : 25-10-1976

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (22), 2 (9), 77, 82 (2)

Citation : (1976) 2 KarLJ 400 : (1977) 2 LLJ 404

Hon'ble Judges : S.R. Range Gowda, J;B. Venkataswami, J

Bench : Division Bench

Judgement

1. This is an appeal under S. 82(2) of the Employees' State Insurance Act, (referred to as "Act") against an order made by the Employees' Insurance Court (referred to as "Insurance Court"), Bangalore, in E.S.I. Application No. 24/1972. The application has been preferred by the respondent-mills (referred to as "Mills"), under S. 77 of the Act. The appellant is the Regional Director of Employees' State Insurance Corporation (referred to as "Corporation").

2. The material circumstances leading to the appeal, briefly, are : The mills, being a company registered under the Companies Act, is engaged in the manufacture of textile yarn and fabrics, and has been carrying on its business in two factories situated at Davangere and Gadag in the State. The present dispute relates to the demand for payment of special contribution under the Act in respect of wages paid to apprentices and casual employees employed by it. The sum so demanded is Rs. 827 only.

3. On behalf of the mills, the reliefs sought were of a declaratory character and have been set out thus :

"(i) Casual workmen are not employees under S. 2(9) of the Act;

(ii) Apprentices are not employees under S. 2(9) of the Act and allowance paid to them is not wages under S. 2(22) of the Act;

(iii) Arrears of wages paid to the employees under recommendation of the second Central Wage Board for Cotton Textile Industry are not liable to payment of employees special contribution."

4. On behalf of the Corporation, it was contended that the mills was not entitled to the said reliefs principally on the grounds : (1) that the so called apprentices were not really apprentices coming within the purview of the Apprentices Act, and the remuneration paid to them constituted "wages" within the meaning of S. 2(22) of the Act; and (2) that casual workers employed in connection with the reconstruction of the compound wall and the repairs to the buildings of the factory were employees within the meaning of the definition in S. 2(9) of the Act.

5. After trial of the issues and upon an examination of the evidence adduced by the parties, the Insurance Court found on all issues against the Corporation and in favour of the mills, and granted the reliefs sought. Hence the appeal by the corporation.

6. On behalf of the appellant, only contentions bearing on the issue relating to apprentices and casual employees were urged. Hence, we are not concerned, herein with the relief relating to payment of arrears of wages.

7. On the issue relating to apprentices, the Insurance Court held that the evidence of A.W. 1 (the witness for the mills), and the documentary evidence Exts. A1 to A6 produced in regard to the procedure followed in the employment of apprentices and the terms of such employment, was preferable to that of the witnesses for the Corporation. It, therefore, came to the conclusion that such apprentices fell outside the purview of the definition of an employee under the Act. Presumably because that such a finding was essentially one of fact and, therefore, not ordinarily amendable to review in an appeal of the present nature, it was simply contended that the remuneration paid to such apprentices was "wages" within the meaning of S. 2(22) of the Act and, therefore, the mills would still be liable to the contribution demanded.

8. We consider it unnecessary to examine this contention in any detail, in view of the enunciation of the Supreme Court in the decision in the case of *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, vide *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, . In that case, in the context of a question whether apprentices employed by the company fell within the scope and ambit of Sub-section (9) and (22) of S. 2 of the Act, it has been observed by the Court thus :

"From the terms of the agreement it is clear that apprentices are mere trainees for a particular period for a distinct purpose and the employer is not bound to employ them in their works after the period of training is over. During the apprenticeship they cannot be said to be employed in the work of the company or in connection with the work of the company. That would have been so if they were employed in a regular way by the company. On the other hand the purpose

of the engagement under the particular scheme is only to offer training under certain terms and conditions. Besides, the apprentices are not given wages within the meaning of that terms under the Act. If they were regular employees under the Act, they would have been entitled to additional remuneration such as daily allowance and other allowances which are available to the regular employees. We are, therefore, unable to hold that the apprentice is an employees within the meaning of S. 2(9) of the Act."

9. In the case on hand we have not been shown the existence of any circumstances which would have the effect of taking the case out of the purview of the principles underlying the above enunciation. It also seems clear that once an apprentice fell outside the scope of the definition of "employee" under S. 2(9), the wages earned by him would fall outside the purview of S. 2(22). Hence, this contention of the appellant cannot be allowed to prevail.

10. We turn now to the only remaining contention relative to the relief arising from the employment of casual workers. In this connection, it is necessary to advert to a few more facts. The employment of casual workers had become necessary as the compound wall of the factory had come down and some repairs had to be effected to the main building of the factory. The wages of such workers amounted in all to about Rs. 4,500 and this sum hardly amounted to 1% of the total wages disbursed during the relevant period. In this context, the Insurance Court has observed thus :

"* * * * In the light of this it seems to me that these casual workers were engaged sporadically, as and when the necessity arose and that those casual workers could never have had any expectation of continuity of service. * * * *"

11. The rival contentions urged in the context of this finding were based almost entirely on some of the decided cases, which shall be adverted to presently. Before proceeding further, it is convenient to set out a few of the provisions of the Act which have been adverted to in the decisions relied on. They read :

"S. 2(9) "employee" means any person employed for wages 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 in the factory or establishment or elsewhere; or

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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; but does not include. -"

"S. 39(1). The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as

the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation."

"S. 39(4). The contributions payable in respect of each week shall ordinarily fall due on the last day of the last of the week, and where an employee is employed for part of the week or is employed under two or more employers during the same week, the contributions shall fall due on such days as may be specified in the regulations."

"S. 42. * * * * *

(1) Where wages are payable to an employee for a portion of the week the employer shall be liable to pay both the employer's contribution and the employees' contribution for the week in full but shall be entitled to recover from the employee the employee's contribution."

12. On behalf of the appellant Sri Papanna, the learned counsel, placed reliance on an unreported decision of a Division Bench of the High Court of Andhra Pradesh in the case of Andhra Pradesh State Electricity Board Vs. Employees' State Insurance Corporation, while on behalf of the mills, Sri N. Govinda Bhat, the learned counsel cited : (1) Employees' State Insurance Corporation Vs. Gnanambikai Mills Limited, and The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan, The first two case were directly concerned with a question similar to the one on hand. In the remaining case, the Supreme Court was concerned with a case of temporary employment in the context of the applicability of the provisions of employees' Provident Funds Act, and the same is, therefore, distinguishable and cannot be of much assistance to the respondent. We shall not, therefore, advert to it again.

13. In the case of Gnanambika Mills 1974 I Ilj 530 : (1974) L.I.C. 798, (Mad), the Madras High Court, while observing that the definitions of "employee and factory factory" occurring in the Act would lend themselves to the view that casual employees were not excluded from the purview of the Act, held that on a consideration of the several provisions of the Act, particularly Ss. 39(2) and 47, the Act was not intended to apply to casual employees. The relevant enunciation reads :

"It seems to us that taking a practical view of the question, it does not appear to be the intention of the Act that casual employees should be brought within its purview. 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 employees within the purview of the Act the Act would have clearly mentioned it."

14. In the case of Andhra Pradesh State Electricity Board, the High Court of Andhra Pradesh disagreeing with the ratio of the decision in Gnanambika Mills" case, held that casual employees were covered by the Act. This conclusion has been reached on a further consideration if some other provisions of the Act, particularly Ss. 39, 42, 46, 50 and 51. After referring to the reasoning in the Gnanambika Mills" case, the learned Judges have proceeded to observe thus :

"Thus it is clear that if a casual labourer is employed for over a contribution period, he is entitled to sickness or maternity benefit, if the sickness or maternity occurs during the benefit period, though it may not be available to him if he is employed for a shorter period. Merely because some of the benefit's of the Act are not available to some casual labourers, it cannot be said that casual labourers are not end entitled to have the benefits of the Act as expressed by the learned judges of the Madras High Court in the above cited decision. We also notice here that the Madras High Court did not take into account the circumstance that under S. 51 of the Act employees are entitled to disablement benefit, as provided in S. 46(1)(c) without reference to any benefit period or the contribution period "Disablement Benefit" is given to employees suffering "employment injury" as defined in S. 2(8). Employment injury as defined includes a personal injury caused by accident in the course of employment. It is possible for an accident to occur on the first day of employment either casual or to regular employee causing him disablement. Then the disablement benefit can be extended to him without reference to the benefit period or to contribution period. This is again an indication that the Act applies to casual labourers as well.

The Act being a beneficial piece of social security legislation, in the interest of labourers employed in the factory, provisions of the Act will have to be construed with a view to promote the scheme for the benefit of all the "labourers".

15. After giving our careful and anxious consideration to the matter with particular reference to the various provisions referred to and explained in both the aforesaid decisions, we are inclined to respectfully agree with the reasoning and conclusions in the judgment of the High Court of Andhra Pradesh.

16. Following the principle underlying the decision in case of Andhra Prasad State Electricity Board, we hold that the provision of the Act apply to causal employees as well. The conclusion of the Insurance Court in this behalf, therefore, cannot be sustained. Hence the contention of the appellant in this regard clearly deserves to be accepted.

17. In the result, the appeal partly succeeds and is allowed to the extent indicated above. Accordingly, the order in appeal stands modified and the relief in regard to "casual workers" is disallowed. In other respects, the order remains undisturbed. In the circumstances, we make no order as to costs.