IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-106-2018 (O&M)
Date of decision : 31.07.2025

Employees State Insurance Corpn. and another ...... Appellant

versus

M/s Kapsons Industries Ltd. ...... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Adarsh Malik, Advocate for the appellant.

Mr. Pushp Jain, Advocate for Ms. Tanu Bedi, Advocate for the respondent.

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PANKAJ JAIN, J. (Oral)

1. ESIC is in appeal.

2. Challenge is to the order dated 05.08.2017 passed by ESI Court, Jalandhar allowing the petition filed under Section 75 of the Employees' State Insurance Act, 1948 filed by respondent-establishment.

3. As per the undisputed facts on the file, respondent-establishment is a company engaged in the manufacturing of armatures and electro stamping for electrical motors, fans, generators, railway diesel engines and other electrical appliances. The company is covered under the provisions of ESI Act, 1948. The question involved in the present appeal is whether the respondent-company is liable to pay contribution to ESI Corporation qua workmen engaged for purpose of loading and unloading of the material. The Corporation raised demand

of Rs.3,74,377/- and Rs. 27,715/- claiming that the persons employed for loading and unloading of the goods in the factory premises of the establishment are employees as contemplated under Section 2(9) of the ESI Act. The establishment is liable to pay contribution qua them. The establishment disputes its liability. Demand raised by the Corporation was challenged by way of petition under Section 75 of 1948 Act. ESI Court vide impugned judgment allowed the petition filed by the establishment quashing demand raised by the Corporation holding that persons engaged for the purpose of loading and unloading at some intervals by the establishment through contractor, cannot be termed as employee within the meaning of Section 2(9) of 1948 Act.

4. Counsel for the appellant has assailed the order passed by ESI Court relying upon ***Employees' State Insurance Corpn. vs. Harrison Malayalam Pvt. Ltd.*** reported as ***(1993) 4 SCC 361***. Mr. Malik contents that the issue with respect to employees of the contractor engaged by company to execute a contract being covered by 1948 Act has been answered in favour of the Corporation. The present appeal thus, being fully covered by the ratio of law laid down in ***Harrison Malayalam Pvt. Ltd.'s case (supra)*** needs to be allowed.

5. I have heard counsel for the parties and have carefully gone through the records of the case.

6. Section 2(9) of 1948 Act defines employee as under:-

> "(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
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> (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 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 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; 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 or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), and includes such person engaged as apprentice whose training period is extended to any length of time but does not include

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;”

7. Immediate employer has been defined in the following terms under Section 2(13):-

> "(13) "immediate employer", in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor;"

8. Section 2(17) defines principal employer to mean that:-

> (17) "principal employer" means
> (i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named;
> (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;
> (iii) in any other establishment, any person responsible for the supervision and control of the establishment;"

9. Supreme Court considered definition of employee as contemplated under Section 2(9) of 1948 Act in the case of ***Royal Talkies vs. ESI Corpn.*** reported as ***(1978) 4 SCC 204***, to observe that:-

> "14. Now here is a break-up of Section 2(9). The clause contains two substantive parts. Unless the person employed qualifies under both he is not an 'employee'. Firstly he must be employed "in or in connection with the work of an establishment. The expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in

connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. 'in connection with the work of an establishment' only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do any thing which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Surely, an amenity or facility for the customers who frequent the establishment has connection with the work of the establishment. The question is not whether without that amenity or facility the establishment cannot be carried on but whether such amenity or facility, even peripheral may be, has not a link with the establishment. Illustrations may not be exhaustive but may be informative. Taking the present case, an establishment like a cinema theatre is not bound to run a canteen or keep a cycle stand (in Andhra Pradesh) but no one will deny that a can teen service, a toilet service, a car park or cycle stand, a booth foresail of catchy film literature on actors, song hits and the like, surely have connection with the cinema theatre and even further the venture. On the other hand, a book-stall where scientific works or tools are A sold or stall where religious propaganda is done, may not have anything to do with the cinema establishment and may, therefore, be excluded on the score that the employees do not do any work in connection with the establishment, that is, the theatre. In the case of a five- star hotel, for instance, a barber shop or an arcade, massage parlour, foreign exchange counter or tourist assistance counter may be run by some one other than the owner of the establishment but the employees so engaged do work in connection With the establishment or the hotel even though there is no obligation for a hotel to, maintain such an ancillary attraction. By contrast, not a lawyer's chamber or architect's consultancy. Nor indeed, is it a legal ingredient that such adjunct should be exclusively for the establishment, if it is mainly its ancillary.

15. The primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole goal of the statute is to make the principal employer primarily liable for the insurance of kindred kinds of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment.

16. Merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be 'employee'. He must not only be employed in connection with the work of the establishment but also be shown to be employed in one or other of the three categories mentioned in Section 2(9).

17. Section 2(9)(i) covers only employees who are directly employed by the principal employer. Even here, there are expressions which take in a wider group of employees than traditionally so regarded, but it is imperative that any employee who is not directly employed by the principal employer cannot be eligible under Section 2(9)(i). In the present case, the employees concerned are admittedly not directly employed by the cinema proprietors.

18. Therefore, we move down to Section 2(9)(ii). Here again, the language used is extensive and diffusive imaginatively embracing all Possible alternatives of employment by or through all independent employer. In such cases, the 'principal employer' has no direct employment relationship since the 'immediate employer' of the employee, concerned is some one else. Even so, such an employee, if he works (a) on the premises of the establishment, or (b) under the supervision of the

Principal employer or his agent 'on work which is ordinarily part of the work of the establishment or which is preliminary to the work carried on in or incidental to the purpose of the establishment', qualifies under Section 2(9)(ii). The plurality of persons engaged in various activities who are brought into the definitional net is wide and considerable; and all that is necessary is that the employee be on the premises or be under the supervision of the principal employer or his agent. Assuming that the last part of Sec. 2(9) (ii) qualifies both these categories, all that is needed to satisfy that requirement is that the work done by the employee must be (a) such as is ordinarily (not necessarily nor statutorily) part of the work of the establishment, or (b) which is merely preliminary to the work carried on in the establishment, or (c) is just incidental to the purpose of the establishment. No one can seriously say that a canteen or cycle stand or cinema magazine booth is not even incidental to the purpose of the theatre. The cinema goers ordinarily find such work an advantage, a facility an amenity and some times a necessity. All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it. A thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either. Much depends on time and place, habits and appetites, ordinary expectations and social circumstances. In our view, clearly the two operations in the present case, namely, keeping a cycle stand and running canteen are incidental or adjuncts to the primary purpose of the theatre."

10. The aforesaid test and the principles were reiterated in ***Rajakamal Transport vs. Employees' State Insurance Corpn.*** reported as ***(1996) 9 SCC 644*** to observe as under:-

"3. Section 2(9) of the Act defines 'employee' to mean any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies. Clause (ii) envisages that they need not necessarily be directly employed by the employer. Those who are 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 is an employee within the meaning of Section 2(9) of the Act. The controversy is no longer res integra.

4. This Court in *Royal Talkies v. ESI Corpn. [(1978) 4 SCC 204 :* 1978 SCC (L&S) 497 : (1979) 1 SCR 80], was called upon to consider whether workmen engaged in the cycle stand and canteen of a cinema theater were employees of the theater within the meaning of Section 2(9) of the Act. This Court, on interpretation, held that the reach and range of the definition is apparently wide and deliberately transcends pure contractual relationships. In the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution, a teleological approach and social perspective must play upon she interpretative process. The primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole object of the statute is to make the principal employer primarily liable for the insurance of kind of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment.

5. Accordingly it was held thereon that they were the workmen or employees within the meaning of Section 2(9) of the Act. The same ratio was followed in *Regional Director, E.S.I. Corpn. v. South Flour Mills (P) Ltd.* [(1986) 3 SCC 238 : 1986 SCC (L&S) 511 : (1986) 2 SCR 863] (SCR at p. 864) where even the casual employees employed by the employer were held to be employees within the meaning of Section 2(9) of the Act.

6. The same question was considered in another recent judgment of this Court in *Kirloskar Bros. Ltd. v. ESI Corpn.* [(1996) 2 SCC 682 : 1996 SCC (L&S) 533 : (1996) 2 Scale 1] (at p. 5) wherein this Court held in paragraph 11 that:

> "The test of predominant business activity or too remote connection are not relevant. The employee need not necessarily be the one integrally or predominantly connected with the entire business or trading activities. The true test is control by the principal employer over the employee. That test will alone be the relevant test."

7. It is seen that the Insurance Court after elaborate consideration, found as a fact, that the appellants have the control over loading and unloading of the goods entrusted to the appellants. The appellants' regular business is transportation of the goods entrusted to it as carrier. When the goods are brought to the warehouse of the appellants, necessarily the appellants have to get the goods loaded or unloaded through the hamalis and they control the activities of loading and unloading. lt is true as found by the Insurance Court that instead of appellants directly paying the charges from their pocket, they collect as a part of the consideration for transportation of the goods from the customers and pay the amount to the hamalis. The test of payment of salary or wages in the facts of this case is not relevant consideration. What is important is that they work in connection with the work of the establishment. The loading and unloading of the work is done at their directions and control."

11. The Bench that delivered judgment in the case of ***Harrison Malayalam Pvt. Ltd.'s case (supra)*** incidentally dealt with the case of persons hired by the establishment for sporadic work for loading and unloading in the case of ***Employees' State Insurance Corporation vs. Premier Clay Products 1994 Supp (3) Supreme Court Cases 567*** to observe as under:-

"There is no substance in this appeal filed by the Corporation. The respondent had hired some casual coolies for loading and unloading of its goods. The work itself was of a sporadic nature. The coolies were available for work to others and in fact on the very day worked for several others who engaged them. In the circumstances, the said coolies cannot even be called casual workmen. Hence no contribution is payable by the respondent to the Corporation on their behalf. The case of the appellant-Corporation was, therefore, rightly negatived by the courts below. The appeal is dismissed with no order as to costs."

12. The entire thread of the precedents on the issue was considered by Supreme Court in ***Hassan Coop. Milk Producer's Society Union Ltd. vs. ESI Corpn.,*** reported as ***(2010) 11 SCC 537*** to observe as under:-

"20. The masterly analysis and clear exposition of the term "employee" as defined in Section 2(9) done by V.R. Krishna Iyer, J. in *Royal Talkies* [(1978) 4 SCC 204 : 1978 SCC (L&S) 497] has been consistently followed in subsequent decisions. Some of these decisions are :(1) *ESI Corpn. v. South India Flour Mills (P) Ltd*. [(1986) 3 SCC 238 : 1986 SCC (L&S) 511], (2) *Kirloskar Bros. Ltd. v. ESI Corpn.* [(1996) 2 SCC 682: 1996 SCC (L&S) 533: (1996) 33 ATC 231], (3) *Rajakamal Transport v. ESI Corpn.* [(1996) 9 SCC 644 : 1996 SCC (L&S) 1307], (4) *Transport Corpn. of India v. ESI Corpn.* [(2000) 1 SCC 332 : 2000 SCC (L&S) 121] and (5) *Saraswath Films v. EsI Corpn.* [(2010) 11 SCC 553].

21. In the light of the definition of the `employee' under Section 2(9) as interpreted by this Court in *Royal Talkies* [(1978) 4 SCC 204 : 1978 SCC (L&S 497] and subsequent decisions, we may examine the question as to whether the workers employed by the contractors in performance of the contract awarded to them by the appellants for transportation of milk are covered by Section 2(9). The reference to relevant clauses of the agreement at this stage will be appropriate.

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24. We shall assume, to test the validity of the contention, in favour of the E.S.I. Corporation that workers engaged by the contractor (immediate employer) for transportation of milk

have been employed in connection with the work of the principal employer and these employees, thus, qualify under first substantive part of Section 2(9). But as stated in Royal Talkies [(1978) 4 SCC 204 : 1978 SCC (L&S 497] that merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an `employee'; he must not only be employed in connection with the work of the establishment but also be shown to be employed in one or other of the three categories mentioned in Section 2(9). Are these workers covered by any of these categories?

25. It is not the case of any of the parties nor there is any evidence to show that the persons who did loading and unloading were directly employed by the appellants. Section 2(9)(i) is, therefore clearly not attracted as it covers the workers who are directly employed by the principal employer. As a matter of fact, the thrust of the arguments centred round clause (ii) of Section 2(9). This clause, requires either

(a) that the person to be an employee should be employed on the premises of the factory or establishment, or

(b) that the work is done by the person employed under the supervision of the principal employer or his agent on work which is ordinarily part 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.

The expression "on the premises of the factory or establishment" comprehends presence of the persons on the premises of the factory or establishment for execution of the principal activity of the industrial establishment and not casual or occasional presence.

26. We shall again assume in favour of the E.S.I. Corporation that for the purposes of loading and unloading the milk cans, the truck driver and loaders enter the premises of the appellants but mere entry for such purpose cannot be treated as an employment of those persons on the premises of the factory or establishment. We are afraid, the said expression does not comprehend every person who enters the factory for whatever purpose. This is not and can never be

said to be the purpose of the expression. It has to be held that the persons employed by the contractor for loading and unloading of milk cans are not the persons employed on the premises of the appellants' establishment.

27. Now, the next question is, can these workers, in the facts and circumstances of the case, be said to be working under the supervision of the appellants. It is appropriate to refer to a decision of this Court in *CESC Ltd. v. Subhash Chandra Bose* [(1992) 1 SCC 441 : 1992 SCC (L&S) 313] In that case, the question that fell for consideration was, whether on the facts found, the right of the principal employer to reject or accept work on completion, on scrutinizing compliance with job requirements, as accomplished by a contractor, the immediate employer, through his employees, is in itself an effective and meaningful "supervision" as envisaged under Section 2(9) of the 1948 Act. The majority view explained :

> "14. ......In the textual sense 'supervision' of the principal employer or his agent is on 'work' at the places envisaged and the word 'work' can neither be construed so broadly to be the final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all times and at each and every step of the work. A harmonious construction alone would help carry out the (1992) 1SCC 441 purpose of the Act, which would mean moderating the two extremes. When the employee is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidentally, or occasionally, while the work is in progress, so as to scrutinise the quality thereof and to detect faults therein, as also put to timely remedial measures by directions given, finally leading to the satisfactory completion and acceptance of the work, that would in our view be supervision for the purposes of Section 2(9) of the Act. It is the consistency of vigil, the proverbial 'a stich in time saves nine'. The standards of vigil would of course depend on the facts of each case. Now this function, the principal employer, no doubt can delegate to his agent who in the eye of law is his second self, i.e., a substitute of the principal employer.

> The immediate employer, instantly, the electrical contractors, can by statutory compulsion never be the agent of the principal employer. If such a relationship is permitted to be established it would not only obliterate the distinction between the two, but would violate the provisions of the Act as well as the contractual principle that a contractor and a contractee cannot be the same person..........".

28. The decision in CESC Ltd. v. Subhash Chandra Bose [(1992) 1 SCC 441 : 1992 SCC (L&S) 313] also referred to the definition of "agent" drawn in Halsbury's Laws of England (Hailsham Edition) Vol. 1 at pp 145-46, para 350 which is as follows :

> “350. *Agent distinct from servant and independent contractor-*
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> "An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given to him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control and supervision of the principal."

29. After taking into consideration Section 182 of the Indian Contract Act, 1872 that defines “agent”, the majority view recorded its conclusion thus : (*CESC Ltd. case* [(1992) 1 SCC 441 : 1992 SCC (L&S) 313], SCC p. 458, para 20)

> "20. Thus on both counts, the principal question as well as the subsidiary question must be answered against the ESIC holding that the employees of the electrical contractors, on the facts and circumstances, established before the Division Bench of the High Court, do not come in the grip of the Act and thus all

demands made towards ESI contribution made against the CESC and the electrical contractors were invalid. We affirm the view of the High Court in that regard."

30. Although, E.S.I. Court in respect of the appellants in separate orders, has recorded a finding that such workers work under the supervision of the principal employer and the said finding has not been interfered with by the High Court but we find it difficult to accept the said finding. The ordinary meaning of the word “supervision” is “authority to direct” or “supervise” i.e., to oversee. The expression “supervision of the principal employer” under Section 2(9) means something more than mere exercise of some remote or indirect control over the activities or the work of the workers.

31. As held in *CESC Ltd. case* [(1992) 1 SCC 441 : 1992 SCC (L&S) 313] that supervision for the purposes of Section 2(9) is “consistency of vigil” by the principal employer so that if need be, remedial measures may be taken or suitable directions given for satisfactory completion of work. A direct disciplinary control by the principal employer over the workers engaged by the contractors may also be covered by the expression “supervision of the principal employer”.

32. The circumstances, as in the case of HCMPSU Ltd., that the authorized representatives of the principal employer are entitled to travel in the vehicle of the contractor free of charge or in the case of BURDCMPS Union, that the principal employer has right to ask for removal of such workers who misbehave with their staff are not the circumstances which may even remotely suggest the control or interference exercised by the appellants over the workers engaged by the contractor for transportation of milk. From the agreements entered into by the appellants with the contractors, it does not transpire that the appellants have arrogated to themselves any supervisory control over the workers employed by the contractors. The said workers were under the direct control of the contractor. Exercise of supervision and issue of some direction by the principal employer over the activities of the contractor and his employees is inevitable in contracts of this nature and that by itself is not sufficient to make the principal employer liable. That the contractor is not an agent of the principal employer under Section 2(9)(ii) admits of no

ambiguity. This aspect has been succinctly explained in *CESC Ltd. case* [(1992) 1 SCC 441 : 1992 SCC (L&S) 313] with which we respectfully agree.

34. No evidence has been collected by the E.S.I. Corporation during the inspection of the appellants' establishments or from the contractors that the appellants have any say over the terms and conditions of employment of these employees or that the appellants have any thing to do with logistic operations of the contractors. As a matter of fact, there is nothing on record to show that principal employer had any knowledge about the number of persons engaged by the contractors or the names or the other details of such persons. There is also no evidence that the appellants were aware of the amount payable to each of these workers. In the circumstances, even if it be held that the transportation of milk is incidental to the purpose of factory or establishment, for want of any supervision of the appellants on the work of such employees, in our opinion, these employees are not covered by the definition of "employee" under Section 2(9) of the Act."

13. The provision of Section 2(9) of 1948 Act was again considered by Supreme Court in the case of ***Royal Western India Turf Club Ltd. vs. ESI Corpn.*** reported as ***(2016) 4 SCC 521*** to hold as under:-

"12. This Court in *ESI Corpn. v. South India Flour Mills (P) Ltd. [ESI Corpn. v. South India Flour Mills (P) Ltd.*, (1986) 3 SCC 238: 1986 SCC (L&S) 511: AIR 1986 SC 1686] has overruled the decision of the Madras High Court in *ESI Corpn. v. Gnanambikai Mills Ltd. [ESI Corpn. v. Gnanambikai Mills Ltd.*, 1973 SCC OnLine Mad 17: 1974 Lab IC 798] in which the High Court laid down that though casual employee may come within the definition of the term "employee" under Section 2(9) of the Act, yet they may not be entitled to sickness benefits in case their employment is less than the benefit period or contribution period and that it does not appear from the Act that casual employee should be brought within its purview. This Court while overruling the decision of the High Court held thus: (SCC pp. 243-44, paras 8-11)

"8. Section 39 provides for contributions payable under the Act. Sub-section (4) of Section 39 provides as follows:

39. (4) The contributions payable in respect of each week shall ordinarily fall due on the last day 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.

9. Sub-section (4) clearly indicates employment of a casual employee when it provides 'and where an employee is employed for part of the week'. When an employee is employed for part of a week, he cannot but be a casual employee. We may also refer to sub-section (3) of Section 42 relating to general provisions as to payment of contributions. Sub-section (3) reads as follows:

42. (3) 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 employee's contribution for the week in full but shall be entitled to recover from the employee the employee's contribution.

10. Sub-section (3), inter alia, deals with employer's liability to pay both employer's contribution and the employee's contribution where wages are payable to an employee for a portion of the week. One of the circumstances when wages may be payable to an employee for a portion of the week is that an employee is employed for less than a week, that is to say, a casual employee. Thus Section 39(4) and Section 42(3) clearly envisage the case of casual employees. In other words, it is the intention of the legislature that the casual employees should also be brought within the purview of the Act. It is true that a casual employee may not be entitled to sickness benefit as pointed out in *Gnanambikai Mills [ESI Corpn. v.*

Gnanambikai Mills Ltd., 1973 SCC OnLine Mad 17: 1974 Lab IC 798). But, in our opinion, that cannot be a ground for the view that the intention of the Act is that casual employees should not be brought within the purview of the Act. Apart from sickness benefit there are other benefits under the Act including disablement benefit to which a casual employee will be entitled under Section 51 of the Act. Section 51 does not lay down any benefit period or contribution period. There may again be cases when casual employees are employed over the contribution period and, in such cases, they will be entitled to even the sickness benefit. In the circumstances, we hold that casual employees come within the purview of the Act. In *A.P. SEB v. ESI Corpn. [A.P. SEB v. ESI Corpn.,* 1977 SCC OnLine AP 17: (1977) 2 LLN 356], *ESI Corpn. v. Davangere Cotton Mills Ltd. [ESI Corpn. v. Davangere Cotton Mills*, 1976 SCC OnLine Kar 197: (1976) 2 Kant LJ 400] and *ESI Corpn. v. Oswal Woollen Mills Ltd. [ESI Corpn. v. Oswal Woollen Mills Ltd.,* 1980 SCC OnLine P&H 198: 1980 Lab IC 1064), the Andhra Pradesh High Court, the Karnataka High Court and the Punjab and Haryana High Court have rightly taken the view that casual employees are employees within the meaning of the term 'employee' as defined in Section 2(9) of the Act and, accordingly, come within the purview of the Act.

11. Indeed Dr Chitaley, learned counsel appearing on behalf of the respondent Company in Civil Appeal No. 819 (NL) of 1976, frankly concedes that it will be difficult for him to contend that casual workers are not covered by the definition of the term 'employee' under Section 2(9) of the Act. He, however, submits that in the instant case the work in which the casual workers were employed by the respondent Company, namely, Shri Shakhti Textiles Mills (P) Ltd., not being the work of the factory or incidental or preliminary to or connected with the work of the factory, such workers cannot be employees within the meaning of Section 2(9) of the Act. The contention of the learned counsel

> is that the work of the factory being 'weaving', an employee within the meaning of Section 2(9) must be employed on any work incidental or preliminary to or connected with the work of weaving that is carried on in the mill or factory. The counsel submits that the work of construction of factory buildings cannot be said to be an activity or operation incidental to or connected with the work of the factory, which is weaving. Mr D.N. Gupta, learned counsel appearing on behalf of the respondent Companies in the other cases adopts the contention of Dr Chitaley and submits that the workers employed for the construction of the factory buildings do not come within the purview of the definition of 'employee' under Section 2(9) of the Act."
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> In view of the aforesaid decision it is apparent that the submission raised by Royal Turf Club that casual workers are not covered under the ambit of the ESI Act is too tenuous for its acceptance.

> 13. Mr Cama, learned Senior Counsel has pressed into service a decision of this Court in *ESI Corpn. v. Premier Clay Products [ESI Corpn. v. Premier Clay Products*, 1994 Supp (3) SCC 567: 1995 SCC (L&S) 162]. In the said case the work itself was of a sporadic nature. The coolies were available to work for others and on the very day worked for several others who also engaged them for loading and unloading of goods. Thus, it was held that coolies could not be said to be casual workmen under the ESI Act. The said decision has absolutely no application to the fact situation of the instant case where work is not sporadic in nature. The employees' work for the day of racing which is perennial activity of Royal Turf Club and in view of the provisions of the Act, the Rules, the Regulations and the Notification dated 18-9-1978, there is no doubt that such employees are covered and consequently are entitled for benefit of the Act.”

14. In the light of the afore mentioned prism of precedents, it can be thus observed that a person to be an ‘employee’ under Section 2(9) and thus covered by the provision of 1948 Act, is required to

satisfy the following conditions:-

> (A) The person should be employed on the premises of the factory or establishment.
>
> (B) That the work done by the person employed under the supervision of the principal employer or his agent on work must be a work which is ordinarily part of the factory or establishment or the work should be preliminary to the work carried on or incidental to the purpose of the factory or establishment.
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> (C) In order to establish the supervisory nature of the principal employer to invoke Section 2(9), there must be in evidence to suggest that the principal employer has some say over the terms and conditions of the employment of the employees.
>
> (D) The work should not be of a sporadic nature.

15. Applying the aforesaid parameters to the present case, this Court finds that there is no evidence on record to suggest that the work assigned to the employees qua which the contribution is being demanded was at least carried out for one full day or that the principal employer had any supervision over the work of the employees, i.e. the respondent-establishment had any say in the engagement of the employees by the contractor being the principal employer.

16. In the considered opinion of this Court, the present case is squarely covered by the ratio of law laid down by Supreme Court in the case of ***Premier Clay Products (supra).***

17. Finding no merits in the present appeal, the same is ordered to be dismissed.

18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

31.07.2025
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes