PETITIONER:
REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION,MAD

Vs.

RESPONDENT:
SOUTH INDIA FLOUR MILLS (P) LTD. ETC. ETC.

DATE OF JUDGMENT29/04/1986

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
ERADI, V. BALAKRISHNA (J)

CITATION:
1986 AIR 1686 1986 SCR (2) 863
1986 SCC (3) 238 1986 SCALE (1)1315
CITATOR INFO :
RF 1992 SC 573 (36)

ACT:
Employees' State Insurance Act, 1948 - Section 2(9) 'employee' - 'work of the factory' - interpretation of casual employees - whether fall within purview of Act.

HEADNOTE:
The respondent-company in Civil Appeal No. 801 of 1976 is engaged in milling wheat into wheat products in its flour mill. It commenced the construction of another building in the compound of the existing factory for the expansion of the factory and engaged workmen for such construction on daily wage basis. The appellant-Corporation called upon the respondent-company to make contribution in respect of the workmen employed for the construction work of the factory building as required by the Employees State Insurance Act, 1948.

The respondent-company disputed its liability and filed a petition under Art. 226. A Single Judge allowing the petition took the view that the persons employed in the construction of a new unit of the factory were not employees within the meaning of the definition of the term 'employee' under s. 2(9) of the Act.

On appeal by the appellant-Corporation, a Division Bench relying upon an earlier decision of that Court in Employees State Insurance Corporation v. Ghanambikai Mills Ltd., [1974] 2 LLJ 530 dismissed the appeal and held that construction workers being causal employees do not come within the purview of the Act.

The connected appeals and the special leave petitions are based on similar facts and involve a common question of law.
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Allowing the appeals and petitions of the appellant-Corporation the Court.
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HELD : 1. The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. [871 F]

2. Casual employees are employees within the meaning of

the term 'employee' as defined in s. 2(9) of the Act and accordingly come within the purview of the Act.

Andhra Pradesh State Electricity Board v. Employees' State Insurance Corporation, Hyderabad, [1977] 1 LLJ 54, Regional Director, ESIC, Bangalore v. Davangere Cotton Mills, [1977] 2 LLJ 404 and Employees' State Insurance Corporation, Chandigarh v. Oswal Woollen Mills Ltd., [1980] 2 Lab. I.C. 1064, relied upon.

Employees State Insurance Corporation v. Ghanbikai Mills Ltd., [1974] 2 LLJ 530, overruled.

Royal Talkies, Hyderabad v. Employees' State Insurance Corporation, [1978] 4 SCC 204, referred to.

3. The definition of the term "employee" under s. 2(9) of the Act is very wide. It includes within it any person employed on any work incidental or preliminary to or connected with the work of the factory or establishment. It is difficult to enumerate the different types of work which may be said to be incidental or preliminary to or connected with the work of the factory or establishment. [871 B-C]

4. In the instant cases, the additional buildings have been constructed for the expansion of the factories in question. It is because of these additional buildings that the existing factories will be expanded and consequently, there will be increase in the production that is to say increase in the work of the factories concerned. So the work of construction of additional buildings has a link with the work of the factories. It cannot, therefore be said that the construction work has no connection with the work or the purpose of the factories. [871 C-E]
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5. The expression 'work of the factory' should also be understood in the sense of any work necessary for the expansion of the factory or establishment for augmenting or increasing the work of the factory or establishment. Such work is incidental or preliminary to or connected with the work of the factory or establishment. [873 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 801 of 1976 Etc.

From the judgment and Order dated 11.12.1973 of the Madras High Court in Writ appeal No. 288 of 1970.

V.C. Mahajan, Dr. Y.S. Chitale, Miss Kitty Kumaramangalam, Girish Chandra, S. Ramasubramaniam, D. N. Gupta, N.S. Das Bahal, Miss Sushma Ralhan, D.N. Gupta and C.V. Subba Rao for the appearing parties.

The Judgment of the Court was delivered by

DUTT, J. Civil Appeal No. 801 of 1976 and Civil Appeal No. 819 (NL) of 1976 have been preferred by Special Leave by the Employees State Insurance Corporation, hereinafter referred to as 'ESI Corporation'. The ESI Corporation has also filed Special Leave Petition Nos. 1134-1145(NL) of 1978. These appeals and the Special Leave Petition raise a common question of law and, as such, they have been heard together. Indeed, by an order of this Court the Special Leave Petitions were directed to be heard along with Civil Appeal No. 801 of 1976. Before we indicate thhe question of law we may state a few facts.

In Civil Appeal No. 801 of 1976, the respondent company, South India Flour Mills (P) Ltd., is engaged in milling wheat into wheat products in its flour mill. It is not disputed that the mill of the respondent company is a factory within the meaning of the Factories Act, 1948. In or

about the middle of 1964, the respondent company commenced the construction of another building in the compound of the existing factory for the expansion of the factory and engaged workmen for such construction on daily wage basis. The ESI Corporation called upon the respondent company to make contribution in respect of
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the workmen employed for the construction work of the factory building as required by the Employees' State Insurance Act, 1948, hereinafter referred to as 'the Act'. The respondent company moved the Madras High Court under Article 226 of the Constitution against the said demand. A learned Single Judge of the High Court took the view that the persons employed in the construction of a new unit of the factory were not employees within the meaning of the definition of the term 'employee' under section 2(9) of the Act. In that view of the matter, the learned Judge allowed the writ petition of the respondent company. On appeal by the ESI Corporation to a Division Bench of the High Court, the Division Bench simply referred to and relied upon an earlier decision of that Court in Employees State Insurance Corporation v. Gnanambikai Mills Ltd., [1974] 2 L.L.J. 530. In that case, it has been held that though casual employees come within the definition of the term 'employee' under section 2(9) of the Act yet, as they may not be entitled to sickness benefit in case their employment is less than the benefit period or contribution period, it does not appear to be the intention of the Act that casual employees should be brought within its purview. Accordingly, it has been held that construction workers being casual employees do not come within the purview of the Act. The appeal preferred by the ESI Corporation was dismissed.

In Civil Appeal No. 819 (NL) of 1976, the respondent company, Shri Sakhti Textiles Pvt. Ltd., was granted an additional spindleage. Accordingly, the respondent company expanded its mill, that is the factory, by putting up of new buildings and, for that purpose, the company had to employ a large number of workers. The ESI Corporation demanded from the respondent company contributions in respect of the said workers for the period from July 1, 1963 to September 30, 1967. The respondent company instituted proceedings under section 75 of the Act in the Employees' State Insurance Court, Coimbatore, inter alia, praying for a declaration that the workers employed for the construction work of the factory buildings were not employees within the meaning of section 2(9) of the Act. The Employees' State Insurance Court held that the workers engaged by the respondent company for putting up of additional constructions for the factory were not employees within the definition of the term 'employee' under
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the Act. On appeal by the ESI Corporation against the order of the Employees' State Insurance Court a Division Bench of the Madras High Court took the view that employment of workers for putting up of additional buildings for the purpose of commencing manufacturing process would not be employment incidental or preliminary to or connected with the work of the factory and, accordingly, the workers employed for the purpose of construction of additional buildings were not employees within the meaning of section 2(9) of the Act. In that view of the matter, the Division Bench dismissed the appeal.

In the Special Leave Petition Nos. 1143-1145 of 1978, the respondent companies owning the textile mills workers for the construction of additional factory buildings. The

Division Bench of the Madras High Court has following its earlier decisions taken the same view that the workers employed for the construction of additional factory buildings of the mills in question are not employed within the meaning of section 2(9) of the Act. Hence the ESI Corporation has filed these Special Leave Petitions which, as aforesaid, have been heard along with the above appeal.

In view of the facts stated above, the only question that is involved in these appeals and the Special Leave Petitions is whether the workers employed for the construction of additional buildings for the expansation of the factories in question are employees within the meaning of section 2(9) of the Act. Section 2(9) of the Act before the same was amended by the Amendment Act 44 of 1966 provided as follows :

> "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 -
> (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 if 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

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> 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."

It appears from the definition that three categories of persons as mentioned in clauses (i), (ii) and (iii) of section 2(9) can be employees. We are, however, concerned with the category under clause (i) inasmuch as in all the cases before us the workers concerned were directly employed by the principal employers, namely, the respondent companies. Under category (i), in order to be an employee a person must be employed directly by the employer for wages in the factory or establishment on any work which should be incidental or preliminary to or connected with the work of the factory or establishment. The definition seems to be very wide and brings within the purview various types of employees. As soon as the conditions under the definition are fulfilled, one becomes an employee within the meaning of the definition.

Before we proceed to consider the principal question, we may deal with a connected question, namely, whether the construction workers, who are admittedly casual workers, come within the purview of the Act. We have already noticed that in the case of Gnanambikai Mills (Supra) referred to and relied upon by the Division Bench of the Madras High Court in Civil Appeal No. 801 of 1976, it has been held that the casual workers do not come within the purview of the Act although they are covered by the definition of the term 'employee' under section 2(9) of the Act. The reason for the said finding is that in view of their short duration of employment, they will not be entitled to sickness benefit

and, as such, it is not the intention of the Act that casual employees should be brought within its purview. In expressing that view, it appears that the Madras High Court has overlooked some other provisions of the Act which will be referred to presently.

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

> "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 regultion."

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:

> "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."

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 employee 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 the case of Gnanambikai Mills (Supra). 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

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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 Andhra Pradesh State Electricity Board v. Employee's State Insurance Corporation, Hyderabad, [1977] 1 LLJ 54; Regional Director, ESIC, Bangalore v. Davangere Cotton Mills, [1977] 2 LLJ 404 and Employees' State Insurance Corporation, Chandigarh v. Oswal Woollen Mills Ltd., [1980] 2 Lab. I.C. 1064, the Andhra Pradesh High Court, 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.

Indeed Dr. Chitale, learned counsel appearing on behalf

of the respondent company in Civil Appeal No. 819 (NL) 1976, franckly 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 Shakthi Textiles Mills Pvt. 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. 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. Chitale 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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Therefore, the investigation under the principal question A formulated above boils down to this, namely, whether the construction of factory buildings for the expansion of the existing factories is incidental or preliminary to or connected with the work of the factory or not. It has been already noticed that the definition of the term 'employee' under section 2(9) of the Act is very wide. It includes within it any person employed on any work incidental or preliminary to or connected with the work af the factory or establishment. It is difficult to enumerate the different types of work which may be said to be incidental or preliminary to or connected with the work of the factory or establishment. It seems that any work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment. In the instant cases, the additional buildings have been constructed for the expansion of the factories in question. It is because of these additional buildings that the existing factories will be expanded and, consequently, there will be increase in the production, that is to say, increase in the work of the factories concerned. So the work of construction of these additional buildings has a link with the work of the factories. It cannot be said that the construction work has no connection with the work or the purpose of the factories. So it is difficult to hold that the work of construction of these additional factory buildings is not work incidental or preliminary to or connected with the work of the factories.

The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for the expansion of the factory are not employees within the meaning of section 2(93 of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions

liberally in favour of the persons for whose benefit the enactment has been made.
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In this connection, we may refer to a decision of this Court in Royal Talkies, Hyderabad v. Employees' State Insurance Corporation, [1978] 4 SCC 204. The question that came up for consideration by this Court was whether the workers employed to run the canteen and the cycle stand situate within the compound of a 'cinema theatre' were employees within the meaning of section 2(9) of the Act. It was held the workers employed to run the canteen and the cycle stand were employees within the meaning of section 2(9) of the Act. Krishna Iyer, J. speaking for the Court, observes:

> "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 anything 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..... 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 canteen service, a toilet service, a car park or cycle stand, a booth for sale of catchy film literature on actors, song hits and the like, surely have connection with the cinema theatre and even further the venture."

In our opinion, the work of construction of additional buildings required for the expansion of a factory must be held to be ancillary, incidental or having some relevance to or link with the object of the factory. It is not correct to
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say that such work must always have some direct connection with the manufacturing process that is carried on in the factory. The expression "work of the factory" should also be understood in the sense of any work necessary for the expansion of the factory or establishment or for augmenting or increasing the work of the factory or establishment. Such work is incidental or preliminary to or connected with the work of the factory or establishment.

We are, therefore, unable to accept the view of the Madras High Court in all these cases that the workers employed for the construction work of the additional buildings for the expansion of the factories are not employees within the meaning of section 2(9) of the Act.

For the reasons aforesaid, we allow Civil Appeals Nos. 801 of 1976 and 819 (NL) of 1976 and set aside the judgments of the Madras High Court.

So far as Special Leave Petitions Nos. 1143-1145 (NL) of 1978 are concerned, we grant special leave in all these matters, set aside the judgment of the Madras High Court and

Allow the connected appeals.

The parties are directed to bear their own costs in all these matters.

A.P.J. Appeals allowed.

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