Chopra Printing Press
v.
Des Raj

Bedi, J.

leave no room for doubt whatsoever that the respondent would be deemed to be getting Rs. 60 per mensem at the relevant time. As such the compensation allowed to the respondent (Des Raj) was correctly estimated. The appeal, therefore, stands dismissed with costs.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J., and Harbans Singh, J.

CHANAN SINGH,—*Appellant.*

versus

REGIONAL DIRECTOR EMPLOYEES' STATE INSURANCE CORPORATION,—*Respondents.*

First Appeal Order No. 17 of 1961.

1962

December 14th.

Employees' State Insurance Act (XXXIV of 1948)—S. 96—Rules framed under, by the Punjab State Government—Rule 17—Whether intra vires—*S. 2(12)—factory—Principal Employer and Accountant—Whether to be included in the twenty persons—Part-time employee—Whether to be counted as one person—Electric Supply Company—Administrative staff and line staff—Whether to be counted amongst the twenty persons.*

Held, that the fixing of a period of limitation is a procedural matter and the Punjab State Government was within its powers under section 96(I)(b) of the Employees' State Insurance Act, 1948 in framing rule 17 which is not inconsistent with any provision in the Act. This rule by which the State Government fixed the period of one year as the period of limitation for an application under section 75 of the Act is *intra vires.*

Held, that whether the principal employer is to be included in the twenty persons necessary to make premises a factory within the meaning of section 2(12) of the Act or not must depend on the facts of each particular case, and where, as must be the case in many small businesses which

are on the border line of being factories within the meaning of the Act, the principal employer is a person who actively works on the premises in connection with the business, he must be included in the figure of twenty, but if he is the principal employer merely by being the owner or occupier of the factory and does not take any personal active part in running the business on the spot, leaving this to a manager, he should be excluded. A person working as an accountant is also to be included in the twenty persons required to make any premises a factory for the purposes of the Act. It is not necessary that all the persons working in the premises must be engaged in the manufacturing process. In any case the work of accounting and the works connected with the sale and distribution of the products of the factory are matters incidental or preliminary to or connected with the work of the factory.

Held, that each part-time employee is to be counted as one person so that if there are eighteen full time employees working and two who work at different times for part of the day, they shall be counted as twenty persons for the purposes of the Act and not nineteen.

Held, that the members of the administrative staff of an electric supply company are to be counted amongst the twenty persons required to make a premises a factory for the purposes of the Act. Regarding the line staff, i.e., persons who apparently are kept somewhere in waiting and who go out from time to time when calls are received from consumers for the purposes of putting things right, there is no doubt that their actual work is almost entirely done outside the premises which constitute the factory. Even so they appear still to fall within the definition of 'employee' in section 2(9)(i), since such persons are directly employed by the principal employer and their work is clearly incidental to and connected with the work of the factory, and the persons who are covered by this qualification are clearly employees whether they work inside or outside the factory premises in the light of the closing words "whether such work is done by the employee in the factory or establishment or elsewhere." Indeed it seems quite clear that once a factory or establishment falls within the scope of the Act it is the intention that every employee of the employer, however employed, is to be covered by the Act and if there were to be any discrimination between

different classes of employees in respect of the beneficient provision of the Act there might be an infringement of Article 14 of the Constitution unless it could be shown that there was some reasonable ground for discriminating between different classes of persons employed by the employer.

Case referred by Hon'ble Mr. Justice Harbans Singh, on 16th April, 1962 to a larger bench for decision of an important question of law involved in the case. The division bench consisting of Hon'ble the Chief Justice and Hon'ble Mr. Justice Harbans Singh after deciding the law points returned the case to the Single Bench on 14th December, 1962 for decision on merits. The case was finally decided by Hon'ble Mr. Justice P. D. Sharma on 20th February, 1963.

First Appeal from the order of Shri C. S. Tiwana, Judge, Employees' State Insurance Court, Amritsar, dated 31st October, 1960 passing a decree for the recovery of Rs. 769 in favour of the respondent.

Partap Singh and Attar Singh, Advocates,—
for the Appellant.

S. N. Chopra and K. L. Kapur, Advocates,—
for the Respondent.

ORDER

FALSHAW, C.J.—These seven appeals, Nos. 17, 18, 41, 59, 140, 142 and 192, all of the year 1961, have been referred to a Division Bench, six by my learned brother Harbans Singh, J. and the other by D. K. Mahajan, J. In two of the appeals the Regional Director of the Employees State Insurance Corporation is the appellant and in the rest he is the respondent, the appeals all being against orders of the Court constituted under section 74 of the Employees' State Insurance Act, XXXIV of 1948, on applications filed before it either by the employer or by the Corporation under section 75 of the Act. Falshaw, C.J.

Chanan Singh
v.
Regional Director Employees' State Insurance Corporation

Falshaw, C.J.

In my opinion the best course will be for the Division Bench to give a decision on certain points of law which have arisen in the appeals, leaving the cases to be decided according to their own facts by a Single Judge in the light of these decisions. I, therefore, do not propose to set out the facts in all the cases except so far as is necessary for the purpose of deciding the points of law.

The main question, which arises in five of the appeals, is the question of the period of limitation for the filing of an application on behalf of the Corporation under section 75(2)(a) of the Act, i.e., for a claim for the recovery of contributions from the principal employer. The Court to decide disputes arising under the Act is constituted under section 74 and sub-sections (1) and (2) of section 75 contains lists of disputes and claims, respectively, which are to be decided by the Court. Section 95 of the Act empowers the Central Government to make rules regarding certain matters, and section 96 empowers the State Government to make rules on certain other matters. The relevant portions of the section read—

> "(1) The State Government may, subject to the condition of previous publication, make rules not inconsistent with this Act in regard to all or any of the following matters, namely:—
>
> .....
>
> .....
>
> (b) the procedure to be followed in proceedings before such Courts and the execution of orders made by such Courts."

Under the powers given to it by this Section the State Government has framed rules which were

set out in a notification, dated the 10th of April, 1951, published in the Gazette of the 20th of April, 1951. Chapter II beginning with rule 13 is headed "Procedure and Execution of Orders" and rule 17 reads—

> "*Limitation.* Every application to the Court shall be brought within twelve months from the date on which the cause of action arose or as the case may be the claim became due:
>
> Provided that the Court may entertain an application after the said period of twelve months if it is satisfied that the applicant had sufficient reasons for not making the application within the said period.
>
> (2) Subject as aforesaid the provisions of Parts II and III of the Indian Limitation Act, 1908 (IX of 1908) shall so far as may be apply to every such application."

The cases in which the question of limitation has arisen are those in which an application has been made to the Court on behalf of the Corporation claiming certain sums to be due from the employer which relate to a date prior to one year before the institution of the application. In two of the cases the Court decided that the Corporation could not claim arrears dating from more than one year from the date of the application, and those are the two cases in which the appeals have been filed in this Court on behalf of the Corporation. One of the decisions was given by the Court at Amritsar and the other by the Court at Ambala. The other three appeals in which this question arises are against orders of the

Chanan Singh
v.
Regional Director Employees' State Insurance Corporation

Falshaw, C.J.

Court at Amritsar, subsequent to a change of the Presiding Officer, by which it has been held that rule 17 is *ultra vires* of the State Government since limitation is not merely a matter of procedure, and therefore no part of the claim of the Corporation was barred by time.

I do not think there can be any doubt of the correctness of the proposition that limitation is a matter of procedure. The distinction between substantive law and the law of procedure is discussed on pages 503 and 504 of the Eleventh Edition of Salmond on Jurisprudence. I quote the following passage:—

> "What, then, is the true nature of the distinction ? The law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions—*jus quod ad actiones pertinet*—using the term action in a wide sense to include all legal proceedings, civil or criminal. All the residue is substantive law, and relates, not to the process of litigation, but to its purposes and subject-matter. Substantive law is concerned with the ends which the administration of justice seeks ; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relations of Courts and litigants in respect of the litigation itself; the former determines their conduct and relations in respect of the matters litigated.
>
> A glance at the actual contents of the law of procedure will enable us to judge the accuracy of this explanation. Whether

I have a right to recover certain property is a question of substantive law, for the determination and the protection of such rights are among the ends of the administration of justice; but in what Courts and within time I must institute proceedings are questions of procedural law, for they relate merely to the modes in which the Courts fulfil their functions."

This question was considered by J. L. Kapur, J., in *Mohammad Arab* v. *Abdul Waheed* (1). The point arose in connection with rules framed by this Court under the provisions of section 14(2) of the Delhi and Ajmer-Merwara Rent Control Act, XIX of 1947, which provided, "with the concurrence of the Chief Commissioner, the High Court may make rules to determine the classes of Courts which shall have power to hear and decide original cases, appeals and applications for revisions and to deal with execution proceedings under this Act and the procedure to be followed by them". A period of 60 days was fixed in the rules for a revision petition to this Court, and in a petition which was filed after the expiry of that period the point was raised that the rule-making power conferred by section 14(2) did not include the power to fix any period of limitation. After considering the authorities the learned Judge held that the law of limitation is part of the law of procedure.

Before Patiala was integrated in the State of Pepsu the High Court had been empowered by a *Farman* of the ruling prince to make rules for its procedure and it had fixed a period of limitation of 30 days in its Rules for a Latters Patent Appeal. The validity of this rule was challenged, but it

(1) A.I.R. 1953 Punj. 76.

Chanan Singh
v.
Regional Director Employees' State Insurance Corporation

Falshaw, C.J.

was held by Chopra and Passey, JJ. in *Mohar Singh* v. *Rehabilitation Minister and others* (2), that the fixing of this period of limitation was within he scope of the power conferred by the *Farman*. It is further pointed out that the similar rule fixing 30 days as period of limitation for an appeal under clause 10 of the Letters Patent, rule 4 in Chapter I-A of Volume V of the Rules and Orders of this Court, has been framed under Article 27 of the Letters Patent which empowers the Court to make rules and orders regulating its practice, and it does not seem that the validity of the rule has ever been challenged eiher in this Court or in the Lahore Court.

There does not appear to be any authority to the contrary except the case relied on by the Court at Amritsar, *Shakoor Abdul Ganny* v. *Mrs. I. M. Russell* (3). In that case an appeal had been struck off for default of payment of process fee under rule 9(1) of the Appellate Side Rules of Procedure of the Rangoon High Court and under sub-rule (2) a period of 8 days was fixed as the time within which an application for restoration had to be filed. This was different from the provisions of Article 168 of the Limited Act which allows an appellant whose appeal has been dismissed for want of prosecution 30 days for applying for readmission. When an application was filed for the readmission of an appeal after a lapse of more than 8 days from the date of its being struck off, the point was raised that the High Court rule was invalid and Carr, J., referred to a larger Bench the question "Is rule 9(2), Appellate Side Rules of Procedure of this Court *ultra vires* in so far as it prescribes a period of limitation less than that prescribed in Article 168, Schedule 1, Limitation

(2) A.I.R. 1952 Pepsu 36.
(3) A.I.R. 1930 Rang. 228.

Act". The matter was heard by Page, C.J. and Carr and Cunliffe, JJ. each of whom wrote a separate judgment, all being agreed in the conclusion that the answer to the question was in affirmative. Only two of the learned Judges appear to have discussed the question whether fixing of a period of limitation is adjective (procedural) or substantive law, and on this point the learned Chief Justice has expressed the opinion that the law of limitation in so far as it prescribes the period within which litigants are entitled to pursue in the civil Courts the remedy in which the law provides for the redress of grievances is a part of the adjective law, while on the contrary Carr, J., has expressed the view that the law of limitation is something more than mere adjective law and much more than merely rules of procedure, and the effect of the law of limitation is to extinguish after the prescribed period a legal right. It is these remarks of Carr, J., on which the learned Presding Officer has relied as being the law laid down in the decision, although these remarks run counter to the view taken by all the legal text-books and I am of the opinion that he has erred on this point. He could not possibly have considered this to be the view of the Court if he had taken the trouble to read the report properly.

Such being the case it seems to me that there is no force in the argument that the fixing of a period of limitation is not a procedural matter and it would, therefore, seem that the rule by which the State Government fixed the period of one year as the period of limitation for an application under section 75 was not *ultra vires.*

The main argument addressed on behalf of the Corporation was that whatever the general principle governing these matters may be, in the particular case the Legislature did not intend the State to

Chanan Singh
v.
Regional Director Employees' State Insurance Corporation

Falshaw, C.J.

fix any period of limitation in the rules of procedure. This is based on the fact that in two places periods of limitation are fixed in the Act, in sections 80 and 82. Section 80 provides that the Court shall not direct the payment of any benefit to a person unless he has made a claim for such benefit in accordance with the regulations made in that behalf within twelve months after the claim became due. Section 82 provides for an appeal to the High Court from an order of the Employees' Insurance Court on a substantial question of law and in sub-section (3) the period of limitation for such an appeal is fixed at sixty days.

The latter provision appears to be quite irrelevant for the purposes of this argument, but from the fact that section 80 fixes a period of limitation of twelve months for a claim for benefit by an employee under the Act, which would, one must presume, be preferred by means of an application under section 75(1)(e), the learned counsel for the Corporation has asked us to draw the inference that the Legislature did not intend that any period of limitation should be imposed on a claim for recovery of contributions by the Corporation in an application filed under section 75(2)(a). However, plausible as this argument may sound, I am nevertheless of the opinion that, limitation being a matter of procedure, the State was within its powers under section 96(1)(b) in framing rule 17, which is not inconsistent with any provision in the Act. It could only be inconsistent if it had fixed a different period of limitation for an application by an employee governed by section 80, but the period of one year fixed in that section has been adopted in the rule, which evidently applies equally to applications by employees and by the Corporation.

The next point which arises concerns the definition of the term 'factory' in section 2(12) of the Act. By section 1(4) the Act is made applicable to all factories including factories belonging to the Government other than the seasonal factories. The relevant portion of the definition of 'factory' reads—

> " 'factory' means any premises including the precincts thereof whereon twenty or more persons are working or were working 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 Indian Mines Act, 1923, or a railway running shed."

The first point arises in connection with the appeal of Manmohan Singh. It appears that in the case of Manmohan Singh, who is the proprietor of a firm called Jupitor Foundry & Machines, there is a dispute as to whether his business comes under the category of 'factory,' the position being that the number of twenty mentioned in the definition is only arrived at by including Manmohan Singh himself. There is no doubt that Manmohan Singh is the 'principal employer' within the meaning of the definition contained in section 2(17)(i), and great stress has been laid on the fact that throughout the Act there is a distinction drawn between the principal employer and the employees. The principal employer is in fact the person held responsible for paying the employer's contribution in respect of each of his employees to the benefit fund, and it certainly does not appear to be intended by the Act that the principal employer is

Chanan Singh
v.
Regional Director Employees' State Insurance Corporation

Falshaw, C.J.

to receive any benefit or be insured under the Act. In these circumstances it is contended that he cannot possibly be intended to be lumped along with his empolyees in the twenty persons whose working in certain premises where some manufacturing process is carried on with the aid of power makes those premises a 'factory' within the meaning of the Act.

On the other hand it could equally well be argued that the language used in the definition of 'factory' has been very carefully selected so as to include all persons who actually work within the premises. I may again repeat the relevant words—

> "any premises including the precincts thereof whereon twenty or more persons are working or were working on any day of the preceding twelve months....."

If it was intended that the twenty were only to include empolyees, the wording could quite easily have been "whereon twenty or more *emlpoyees* are working" or "whereon twenty or more persons are *employed*", and it must be assumed that the choice of words has been deliberate. Both this Act and the Factories Act appeared in the same year 1948 and there is a difference in the definition of 'factory' in section 2(m) of the Factories Act. The definition reads—

> " 'factory means any premises including the precincts thereof—
>
> (i) whereon ten or more workers are working, or were working 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 caried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without 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 (XXXV of 1952) or a railway running shed."

In that definition the word 'workers' is used instead of 'persons" and this must obviously be deliberate, the word 'worker' also being defined in the same section. 'Employee' is elaborately defined in section 2(9) of the Employees' State Insurance Act and in my opinion there can be no doubt that the word 'persons' was deliberately used instead of 'employees' in the definition of 'factory'. This may be due, at any rate partly, to the fact that in the definition of 'employee' by section 9(3)(b) persons employed on a remuneration which exceeds Rs. 400 a month are excluded. The obvious intention appear to be that at any rate the twenty persons necessary to constitute a factory under section 2(12) may include persons who are employees in the ordinary sense, but are excluded from the scope of the Act and the benefits thereunder by reason of the fact that their monthly pay is more than Rs. 400. What then is the position of the employer in this behalf ? In my opinion whether the employer is to be included in the twenty persons

Chanan Singh
v.
Regional Director Employees' State Insurance Corporation

Falshaw, C.J.

necessary to make premises a factory or not must depend on the facts of each particular case, and where, as must be the case in many small businesses which are on the border line of being factories within the meaning of the Act, the principal empolyer is a person who actively works on the premises in connection with the business, he must be included in the figure of twenty, but if he is the principal empolyer merely by being the owner of occupier of the factory and does not take any personal active part in running the business on the spot, leaving this to a manager, he should be excluded.

In the appeals of Chanan Singh two points arise, whether a person working as an accountant is to be included among the twenty persons required to make any premises a factory for the purposes of the Act, and whether if two different persons work for a part of the day at different times they should be counted as two persons or only one. I do not consider that there is any difficulty regarding the question whether somebody engaged on accounts in the premises should be included since if in certain circumstances, as I have already stated above, even the principal employer may be so included, any employee must certainly be counted. I do not propose to repeat the definition of factory, but the two elements are that in part of the premises some manufacturing process must be carried on, and there must be twenty persons working in the premises. Obviously it is not required that all the persons working in the premises are required to be engaged in the manufacturing process. I am aware that a different view has been taken in *Employees' Sate Insurance Corporation* v. *Ganpathia Pillai and others* (4), in which it has been

(4) A.I.R. 1961 Mad. 176.

held that the persons employed in the Managing Agent's office of a mill, which is concerned purely with the administrative side of the mills and sale of finished products, and who are not in any way connected with the manufacturing process or with the work of the factory, are not 'employees' within the meaning of section 2(9)(i). The relevant part of this definition reads—

> " 'employees' 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 is done by the employee in the factory or establishment or elsewhere."

The reason given by the learned Judges for this decision is that in the definition the work which is the prime factor, is the work of the factory and 'factory' means the premises wherein a manufacturing process is being carried on. With due respect I consider that this ignores the definition of 'factory' which makes any premises a factory where twenty people are working although the manufacturing process is carried on only in part of the premises. This clearly envisages the inclusion of persons other than those engaged on the actual manufacturing process, and in any case I am of the opinion that the work of accounting and the works connected with the sale and distribution of the products of the factory are matters incidental or preliminary to or connected with the work of

Chanan Singh
v.
Regional Director Employees' State Insurance Corporation

Falshaw, C.J.

the factory. Indeed I do not consider that there can be any doubt on the point.

Regarding the other matter, whether premises become a factory if on any day there are eighteen full time employees working and two who work at different times for part of the day, I can only say that in my opinion the Court has taken the correct view of this matter, since obviously on the relevant date there were twenty people working in the premises even if some of them were doing so at different times. To hold otherwise would open the door to wholesale abuse of the provisions of the Act, and, as pointed out by the Court, an employer might employ 57 persons in the course of the day in his factory by having three different shifts of 19, and still claim it that his business was not a factory. I am quite sure that this was not what the Legislature intended.

The only other point for considering arises in respect of the appeal of the Corporation against the Ambala Cantonment Electric Supply Corporation. The main point in that appeal was of course the question of limitation and the *vires* of rule 17, but a point has been raised on behalf of the Electric Supply Corporation regarding the inclusion of linemen among the employees covered by the Act and so treating them as persons regarding whom the employer has to pay his contribution. One of the issues framed by the Court was whether the administraive staff and the line staff employed by the Electric Supply Corporation come within the definition of 'employee' and this was decided in favour of the Insurance Corporation. I do not really see how this finding can now be challenged since the Electric Supply Corporation has not filed an appeal. However, since the point has been raised I think