

1962

Present : Tambiah, J.

M. D. S. RATNAWEERA (Labour Officer), Appellant, and  
M. D. W. GOONETILLEKE, Respondent

S. C. 673/62—M. C., Colombo, 16,216/A

*Employees' Provident Fund Act, No. 15 of 1958—Sections 8 (1), 8 (2) (b) (ii), 10 (1), 15, 34 (a), 37, 47—Covered employment—Contributions to Fund—Computation—Meaning of phrase "each month during which he works".*

Where an employer in a covered employment within the meaning of section 8 (1) of the Employees' Provident Fund Act employed three persons for the months of November and December, 1959, and the employees did not work for the full month of December but only for a part of it—

*Held*, that the employer was liable, under section 15, read with section 10 (1), of the Act, to pay to the Employees' Provident Fund contributions of the employees for the month of December even though the employees did not work for the full month.

"The provisions of section 10 (1) of the Act are clearly meant to apply to employments which have been declared as 'covered employments' by Regulation, whether on a monthly basis or on a daily basis, provided the employee in question works during the course of the month, unless, by a regulation, the employment by the day or by the journey is specifically excluded from the operation of the Act in terms of section 8 (2) (b) (ii)."

**A**PPEAL from a judgment of the Magistrate's Court, Colombo.

*V. S. A. Pullenayegum*, Crown Counsel, for the Solicitor-General.

*W. S. S. Jayawardena*, with *Vernon Martyn*, for the accused-respondent.

*Cur. adv. vult.*

November 1, 1962. TAMBLAH, J.—

This is an appeal with the sanction of the Solicitor-General from an order of acquittal of the accused-respondent. The accused-respondent was charged in the Magistrate's Court of Colombo with the following offences :—

1. Being the employer of one K. Prakasa Nadar, a person to whom the Employees Provident Fund Act, No. 15 of 1958, applied, failed to pay in Colombo before the last day of January, 1960, to the Employees Provident Fund contributions of the said employee for the month of December, 1959, in contravention of Section 15 of the said Act, an offence punishable under section 34 (a) read with section 37 of the said Act.

2. Being the employer of one M. M. Anthony Nadar, a person to whom the Employees Provident Fund Act, No. 15 of 1958, applied, failed to pay in Colombo before the last day of January, 1960, to the Employees Provident Fund contributions of the said employee for the month of December, 1959, in contravention of section 15 of the said Act, an offence punishable under section 34 (a) read with section 37 of the said Act.

3. Being the employer of one Gnanaprakasa Nadar, a person to whom the Employees Provident Fund Act, No. 15 of 1958, applied, failed to pay in Colombo before the last day of January, 1960, to the Employees Provident Fund the contributions of the said employee for the month of December, 1959, in contravention of section 34 (a) read with section 37 of the said Act.

At the trial, the prosecution established the following facts :—

- (a) the accused-respondent was an employer in a covered employment within the meaning of section 8 (1) of the Employees' Provident Fund Act, No. 15 of 1958, read with Regulation 2 (1) (a) of the Employees Provident Fund Regulation published in *Government Gazette* No. 11,573 of 31st October, 1958 ;
- (b) the accused-respondent employed, inter alia, three persons, namely, K. Prakasa Nadar, M. M. Anthony Nadar and Gnaprakasa Nadar, for the months of November and December, 1959 ;
- (c) the three employees, referred to above, did not work for the full month of December, 1959, but only for a part of it.

At the close of the case for the prosecution, the accused-respondent, when called for the defence, did not choose to give evidence. Counsel appearing for the accused submitted, as a question of law, that the three employees have not worked for the full month of December, 1959, and that there was no liability. The learned Magistrate accepted the submission made by the defence and held, inter alia, that "the prosecution must prove that he (the employee) was employed for the entire period of that month to make the accused liable to contribute". The interpretation placed by the learned Magistrate on section 10 (1) of the Employees Provident Fund Act, No. 15 of 1958, is canvassed before this Court.

The scheme of the Employees Provident Fund Act, No. 15 of 1958, is to provide for the establishment of an Employees Provident Fund to which both the employee, as well as the employer, should contribute certain percentages of the wages earned by the employees, during a month, to the Employees Provident Fund. In certain types of employment it provides for the employees to draw the sums that are lying to their credit in the Fund in certain contingencies.

Section 10 (1) of the Act reads as follows : " Subject to the provisions of sub-section 3 of this section under section 27, the employee to whom this Act applies, shall, in respect of *each month during which he works in a covered employment*, be liable to pay to the Fund a contribution of an amount equal to four per cent. of his total earnings from the employment during that month ". Section 15 of the Act imposes an obligation on the employer to deduct and pay to the Fund the contribution for each month of such employee.

Mr. Pullenayegum, who appeared for the appellant, contended that the phrase " during each month " must be interpreted as *in the course of each month*. Counsel for the respondent submitted that section 10 (1) (a) imposes a liability only on an employee who is employed on a monthly basis.

A careful perusal of the relevant sections of the Act shows that the phrase " during the month " should be interpreted to mean in the course of the month. If section 10 (1) of the Act was intended to apply only to monthly employees then the statute would have said so in express words " Earnings " are defined in the Act to mean " (a) Basic wages or salary ; (b) Cost of Living Allowance, Special Living Allowance and other Allowances ; and (c) Payment in respect of holidays ". (vide Section 47.)

The phrase " during the month ", in this context, cannot be interpreted to mean " during every day of the month " for the reason that a liability has been imposed on the employer to pay the employees in respect of the holidays also. Section 8 (2) (b) (ii) states that Regulations may be made " to treat as not being a covered employment or to disregard employment

which is usually performed by the day or by the job or by the journey". It follows, therefore, that if such regulations are not made, even "employment by the day or by the job or by the journey" will be regarded as "covered employment" provided it comes within the category of employment set out in any regulation as "covered employment".

The term "employer" has been widely defined in the said Act as any "person who on his own behalf employs, or any person on whose behalf any other person employs, or any person on behalf of any other person employs any person in a covered employment" (vide section 47). The term "employee", therefore, would mean any person who is employed by such an employer; it includes "any apprentice or a learner who is paid a remuneration" (*Ibid.*) It is, therefore, clear that the provisions of section 10 (1) of the said Act are clearly meant to apply to employments which have been declared as "covered employments" by Regulation, whether on a monthly basis or on a daily basis, provided the employee in question works during the course of the month, unless, by a regulation, the employment by the day or by the journey is specifically excluded from the operation of the said Act in terms of section 8 (2) (b) (ii). In the instant case, no regulations exempting the type of employment in question from being a "covered employment" have been brought to my notice.

The intention of the Legislature is to provide for an impecunious class of employees who are employed in certain types of trades. Any distinction between the employee, who works in the course of such month and on a monthly basis, would be invidious and not warranted by the scheme of the Act, in the absence of any specific regulation. The interpretation placed by counsel for the respondent on section 10 (1) of the Act would deny to a class of people the benefits which the Legislature intended to confer on them.

For these reasons, I am of the view that the learned judge has misdirected himself in law in interpreting section 10 (1) and acquitting the accused. The charges against the accused have been proved. I set aside the order of acquittal and convict the accused on all the counts and sentence him to pay a fine of Rs. 10 on each count and, in addition to the fine, he will also pay into the Fund the sum that he is obliged to pay under the provisions of the Act in respect of the three employees set out in the charge for the month of December, 1959. In default of payment of the fine and the sums he is obliged to pay to the Fund, he will undergo a term of one month's simple imprisonment.

*Acquittal set aside.*