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MADRAS HIGH COURT ON ESI CONTRIBUTIONS FOR APPRENTICES

A. Introduction:

The High Court of Madras (“**HC**”), in the *Kandagiri Spinning Mills* case of 2019,¹ held that apprentices when engaged on the basis of Standing Orders, will not be covered under the Employees’ State Insurance Act, 1948 (“**ESI Act**”).

B. Brief Facts:

1. Kandagiri Spinning Mills (“**KSM**”) is covered under the ESI Act.
2. ESI Corporation (“**ESIC**”) issued notice to KSM demanding contributions *inter alia* certain expenses and stipends paid to apprentices.
3. Even though KSM explained to ESIC, it issued notice under Section 45 of the ESI Act (“**Order**”).
4. KSM challenged the Order before the Employees Insurance Court (“**EI Court**”), which dismissed stating that KSM had not bifurcated the expenses and hence was liable to make contribution on the entire amount. Aggrieved, KSM approached the HC.

C. Contention of the Parties:

1. KSM contended that the apprentices were employed based on the Standing Orders.² Therefore they were not within the purview of the ESI Act and the amounts claimed by the ESIC cannot be considered as wages.
2. The ESIC claimed that KSM had engaged equal number of apprentices and regular employees and were liable to pay contributions for the former as well.
3. KSM submitted that the manner of appointment, nature of work and all other conditions of employment of apprentices are different from regular employees. Hence the same treatment cannot be granted to both.

D. Order and Reasoning of the HC:

1. HC allowed the appeal and held that the order passed by the EI Court was erroneous as:
 - a. ESIC failed to prove that the apprentices were guised so to evade contributions.
 - b. KSM had submitted relevant records and had also produced sufficient evidence to prove that the apprentices were appointed under Standing Orders.

¹ *Kandagiri Spinning Mills Ltd. v. The Regional Director, ESI Corporation*, 2021 LLR 1160.

² Under the Industrial Employment (Standing Orders) Act, 1946.

- c. KSM had also provided bifurcation of expenses incurred to determine elements of wages.
2. It took note of the nature of work carried on by the apprentices. It observed that they did not have casual entry into KSM's premises and therefore could not have been treated as employees.

E. Comment:

The ESI Act while defining employees only excludes apprentices who are covered by the Apprentices Act, 1961.³ In this case, the HC has expanded the definition of employees to also exclude apprentices appointed under Standing Orders.

F. Conclusion:

HC adjudged that since ESIC failed to prove that KSM engaged employees under the guise of apprenticeship, the ESI Act is not applicable to apprentices appointed under the Standing Orders.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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³ Section 2(9) of the ESI Act.
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