

CHAPTER NO. III

Concepts & Definitions :-

We are presenting in this chapter the concepts & definitions as stated in different Social Security legislations, particularly of ESI Act. This will give an idea about the nature & scope of the benefits taken by the working community.

Definitions :-

- 1) "Contribution" means the sum of money payable to corporation by the principal employer in respect of an employee & includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;
- 2) "contribution period" means such period, being not less than twenty-five but not exceeding twenty-seven consecutive weeks or six consecutive months, as may be specified in the regulations;
- 3) "dependent" means any of the following-relatives of a deceased insured person, namely :-
 - i) a widow, a minor legitimate or adopted son, unmarried legitimate or adopted daughter or widowed mother; &
 - ii) if wholly dependent on the earnings of the insured person at the time of his death a legitimate or

adopted son or daughter who has attained the age of eighteen years & is infirm;

iii) if wholly or in part dependent on the earnings of the insured person at the time of his death :-

a) a parent other than a widowed mother,

b) a minor illegitimate son, and unmarried

illegitimate daughter or a daughter legitimate or adopted or illegitimate if married & a minor or if widowed & a minor,

c) a minor brother or an unmarried sister or a widowed sister if a minor,

d) a widowed daughter-in-law,

e) a minor child of a pre-deceased son,

f) a minor child of a pre-deceased daughter where no parent of the child is alive, or

g) a paternal grand-parent if no parent of the insured person is alive;

4) "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of & in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;



5) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies, &

- 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;

(ESI Act 34, 1983 page No.3)

¹(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; but doesnot include)

- a) any member of the Indian Naval, Military of Air Forces; or
- b) ¹(any person so employed whose wages excluding remuneration for overtime work) exceed² (one thousand rupees) (1600) a month;

Provided that an employee whose wages (excluding remuneration for overtime work) exceed² (one thousand rupees) a month at any time after (& not before the beginning of the contribution period, shall continue to be an employee until the end of that period;)

- 6) "family" means the spouse & minor legitimate & adopted children dependent upon the insured person & ³(* * *) his dependent parents;

- 7) "factory" means any premises including the precincts thereof whereon twenty or more persons ⁴(are employed or work as employees for wages) on any day of preceding twelve months, & 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 (Mines Act, 1952) or a railway running shed;
- 8) "seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes, ⁵(& includes a factory which is engaged for period not exceeding seven months in a year -
- a) in any process of blending, packing or repacking of tea or coffee; or
 - b) in such other manufacturing process as the central Govt. may, by notification in the official Gazette, specify); (R. ESI Act (34) 1948 page 4)
- 9) "insurable employment" means an employment in a factory or establishment to which this Act applies;

10) "insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act & who is, by reason thereof, entitled to any of the benefits provided by this Act;

11) "permanent" "partial disablement" means such disablement of a permanent of a permanent nature as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.

Provided that every injury specified in part II of the Second Schedule shall be deemed to result in permanent, partial disablement;

12) "permanent total disablement" means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement;

Provided that permanent total disablement shall be deemed to a result from every injury specified in Part I of the schedule or from any contribution of injuries specified in part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said part II against those injuries, amount to one hundred percent or more;

(Reference ESI Act (34) 1948 page No.5)

- 13) "sickness" means a condition which requires medical treatment & attendance & necessitates abstention from work on medical grounds;
- 14) "temporary disablement" means a condition resulting from an employment injury which requires medical treatment & renders an employee as a result of such injury, temporarily incapable of (doing the work which he was doing prior to or at the time of the injury);
- 15) "wages" means all remuneration paid or payable in each to an employee, if the terms of the contract of employment, express or implied, were fulfilled & includes (any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off &) other additional remuneration, if any paid at intervals not exceeding two months but doesnot include -
- a) any contribution paid by the employer to any Pension Fund or Provident Fund or under this Act;
 - b) any travelling allowance or the value of any travelling concession;
 - c) any sum paid to the person employed to defray special expenses entiailed on him by the nature of his employment; or
 - d) any gratuity payable on discharge.

(Referance ESI Act (No.34) 1948. Page No.6).

Coverage of Factories :-

A 'Factory' has been defined as any premises including the precincts thereof whereon 20 or more persons are employed or were employed for wages on any day of the preceding twelve months & in any part of which a manufacturing process is being carried on, but does not include a mine subject to the operation of the Mines Act or a Railway Running Shed.

From an analysis of the definition, the essential requisites of a factory emerge as under :-

- (a) A premises, geographical area within a certain boundary, including precincts thereof,
- (b) in any part of which manufacturing process is carried on with the aid of power, &
- (c) twenty or more persons are employed or were employed for wages on any day in the preceding twelve months.

The words 'Premises' & 'Precincts' have not been defined in the Act & the ordinary dictionary meanings have to be taken in to account. The premises also neednot be a single building. A number of buildings or even an open space might constitute premises, separate buildings located at some distance apart when used for one continuous manufacturing process will also constitute a single manufacturing unit.

Geographical proximity is not essential, but the most important & essential ingredient is its functional working.

The term 'manufacturing process' has been defined in the Factories Act, 1948 as under :-

"Manufacturing Process" means any process for...

- i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal;
- ii) pumping oil or water or sewage or any other substance ;
- iii) generating, transforming or transmitting power or
- iv) composing types for printing, printing by letter press, lithography, photo-gravure or other similar processes, or book binding; or
- v) constructing, reconstructing, repairing, refilling, finishing, or breaking up ships or vessels; or
- vi) preserving or storing any articles in cold storage.

The term 'power' means electrical energy, or any other form of energy which is mechanically transmitted & is, not generated by human or animal agency. Accordingly, if in a

manufacturing process steam is used, it amounts to use of power if constant pressure is maintained in the boiler which transmits the steam & alongwith it the heat. Electrical energy used in the case of photostudio or ironing of cloth, etc. amounts to use of power.

Non use of power for a short period does not take a factory out of the ambit of Section 2(12) if power is ordinarily used. With regard to number of persons, it is not necessary that all the 20 persons should be working in the same Section or department. So long as the efforts of all the departments are co-ordinated to achieve the main objective of the factory, the persons employed in all the departments will count for deciding coverage of the factory.

Counting of 20/10 persons for determining
coverage of factories/establishments

In addition to the persons employed directly by the principal employer, the following categories of persons are also to be counted :

- 1) Working partner of a factory who draws wages independent of his share in the profit;
- 2) Employees on the roll of a factory who are on leave with or without wages;

- 3) A substitute/badli employee employed for wages;
- 4) paid Directors of a company;
- 5) Persons drawing over Rs. 1,600/- per month;
- 6) Persons employed by or through contractor (but not the contractor himself).

The following categories will not be counted :-

- 1) Apprentices/trainees undergoing training for the purpose of learning the trade under an approved Scheme.
- 2) Part-time workers who are employed on contract for service &
- 3) Persons working in the Branch Office/Sales Office, located away from the factory.

Seasonal Factories :

"Seasonal Factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cottong ginning, cottor or jute pressing, decortication of groundnuts, manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes & includes a factory which is engaged for a period not exceeding seven months in a year.