
(2015) 02 KL CK 0136
In the High Court Of Kerala
Case No : Ins. A. No. 6 of 2012

Deputy Director, Employees Insurance Corporation

APPELLANT

Vs

Old Courtyard

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 2(9), 45 A, 45A

Citation : (2015) 146 FLR 682 : (2015) 2 ILR Ker 185 : (2015) 2 KHC 172 :
(2015) 2 KLJ 485 : (2015) 2 KLT 612 : (2015) 2 LLN 744 : (2015) LLR 943 :
(2015) LLR 759

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : T.V. Ajayakumar, for the Appellant; M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas and K. John Mathai, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.B. Suresh Kumar, J.—The Deputy Director of the Employees State Insurance Corporation ("the Corporation" for short) has come up in this appeal challenging the decision of the Employees' Insurance Court, Alapuzha in IC No. 88 of 2006. The respondent is an establishment engaged in hotel business. On 20/06/2005, there was an inspection in the premises of the respondent by an Insurance Inspector attached to the Corporation. At the time of inspection, it was noticed that twelve employees were working for wages in the establishment. On the basis of the report of the said inspection, the Corporation has called upon the respondent to comply with the provisions of the Employees' State Insurance Act ("the Act" for short). Since the respondent did not comply with the demand made by the Corporation, the contributions payable by them under the Act for the period from 20/06/2005 to 30/09/2005 were determined by the Corporation, invoking its power under Section 45 A of the Act. The Insurance Case referred to above was instituted by the respondent challenging the said order passed by the Corporation under Section 45A the Act. According to the respondent, the establishment has not employed the qualified number of employees at any

time and that therefore, the establishment is not liable to be covered under the Act. As regards the report of inspection, the stand taken by the respondent is that four among the twelve persons referred to in the report were trainees, who cannot be considered as employees of the establishment.

2. The Corporation filed a written objection in the proceedings, contending that the trainees are also liable to be treated as employees for the purpose of coverage of the establishment under the Act.

3. The Insurance Court, on a consideration the materials on record, found that the trainees were students attached to various educational institutions and therefore, they cannot be treated as employees, as contended by the Corporation. In the light of the said finding, the Insurance Court declared that the respondent is not liable to comply with the provisions of the Act. The appellant is aggrieved by the said decision of the Insurance Court.

4. Heard Sri. T.V. Ajayakumar, the learned counsel for the appellant and Sri. Benny P. Thomas, the learned counsel for the respondent.

5. The learned counsel for the appellant, relying on the definition of "employee", as contained in Section 2(9) of the Act, contended that the trainees engaged in an establishment are liable to be treated as employees for the purpose of deciding the question of coverage of an establishment under the Act.

6. Per contra, the learned counsel for the respondent contended that the trainees were students of various educational institutions and they cannot be brought within the definition of "employee", as contained in the Act, for, there cannot be any contract of employment with the trainees. He relied on the decision of this Court in *Bharat Hotel v. E.S.I. Corporation* 2014 (3) KHC 571 : 2014 (3) KLT 1130 : ILR 2014 (3) Ker. 944, in support of his contention.

7. The short issue that falls for consideration is, therefore, whether a "trainee" in an establishment is liable to be treated as "employee" for the purpose of coverage of the establishment under the Act. The Act being a piece of social security and welfare Legislation intended to benefit the employees, the said issue is to be resolved giving a purposive interpretation to the provisions of the Act.

8. There cannot be any dispute that a trainee is a person who agrees to work for an employer for a specified period for the purpose of learning the craft or the trade in which the employer agrees to instruct him. Prior to the Employees' State Insurance (Amendment) Act, 1989 ("Act 29 of 1989" for short), the definition of "employee" as contained in Section 2(9) of the Act was as follows :

"2(9) "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 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:

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 does not include--

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed one thousand rupees a month:

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

The said definition of "employee" in the Act as it stood prior to Act 29 of 1989 did not include an apprentice, who is a person who agrees to work for an employer for the purpose of learning the craft or the trade which the employer agrees to instruct him. By virtue of Act 29 of 1989, the definition of "employee" in Section 2(9) of the Act was amended as follows:

"2(9) "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 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;

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 or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment; but does not include--

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;"

It is evident from the said definition that by virtue of the said amendment, the apprentices, not being apprentices engaged under the Apprentices Act, 1961, or under the standing orders of the establishment, were brought under the definition of "employee" under the Act. As such, after Act 29 of 1989, it cannot be contended that the trainees would not come under the definition of "employee". If the provisions in the Act are interpreted to exclude the trainees from the purview of the definition of "employee", persons employed on a regular basis can be denied the benefits of the Act by the employer by engaging trainees on a regular basis.

9. Coming to the case at hand, it is evident from the visit note of DW1, the Inspector of the Corporation who conducted the survey of the establishment of the respondent on 20/06/2005 that the trainees are also paid some remuneration and they are provided food and accommodation in the establishment itself. The fact that the trainees are disbursed a nominal remuneration and that they are being provided food and accommodation in the establishment is not seen seriously disputed. If it is held that such persons do not come under the definition of "employee", unscrupulous employers can defeat the provisions of the Act by engaging trainees on a continuous basis, so that persons employed on a regular basis can be deprived of the benefits of the Act, even in establishments where work is carried on by more than the qualified number of employees.

10. In *Bharath Hotel* (Supra), this Court considered the question whether the stipend disbursed to the trainees in an establishment can be considered as wages within the meaning of Section 2(22) of the Act. It was held in that case that going by the definition of "wages" in the Act, as it stands now, the stipend cannot be considered as wages. In the said case, advertent to the definition of "employee" in Section 2(9) of the Act, this Court held that without amending the definition of "wages" so as to include the stipend paid to trainees, the

amendment by which the apprentices were brought under the definition of "employee" will become otiose. The question whether a "trainee" in an establishment is liable to be treated as "employee" for the purpose of coverage of the establishment under the Act was not an issue in that case. On the other hand, the said case proceeds as if trainees would come within the definition of "employee" under the Act. The said judgment may not come to the aid of the respondent at all. It is beyond dispute that the issue relating to coverage is decided based on the number of employees, and when it is found that the trainees would come within the definition of "employee", they are also liable to be reckoned for the purpose of deciding the coverage of the establishment. The impugned order holding that the trainees are not liable to be reckoned for the purpose of deciding the coverage, in the said circumstances, is illegal and liable to be set aside.

In the result, this appeal is allowed, the impugned order is set aside and IC No. 88 of 2006 on the file of the Employees' Insurance Court, Alappuzha is dismissed.