

(2015) 04 P&H CK 0422
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 2661 of 2012 (QandM)

Employees' State Insurance Corporation and Others	APPELLANT
Vs	
Parmindar Singh	RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 75, 77

Citation : (2015) 147 FLR 330

Hon'ble Judges : Kuldeep Singh, J.

Bench : Single Bench

Advocate : B.S. Bhatia, for the Appellant; Rajan Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—Employees State Insurance Corporation and others have impugned order dated 20.12.2011, passed by the learned Civil Judge (Senior Division), Bathinda, vide which, the petition filed by the respondent Parminder Singh under sections 75 and 77 of the Employees State Insurance Act, 1948 (for short, "the ESI Act"), was allowed and it was held that the petitioner-firm (respondent herein) is not covered under the provisions of the ESI Act.

Briefly stated, certain demands were raised by ESI Corporation for the certain period on the ground that the firm of the petitioner (respondent herein) is covered under the ESI Act. The assertions were denied by the petitioner (respondent herein).

Undisputedly, in this case, 8 regular employees were employed by the petitioner (respondent herein) and 3 casual employees were found working at the time of inspection. The law point arising for consideration is as to whether 3 employees, who were employed for 3 days, are to be treated as casual employees for the purpose of computing the number of employees to be above 10 under the ESI Act.

I have heard learned Counsel for the parties and have also carefully gone

through the file.

Admittedly, in this case, the proved facts are that 8 regular employees were employed by the respondent-firm and that as per record, Jagjit Singh and two laborers were employed for 3 days for carrying out some repair of the machinery. The lower Court held that they were engaged casually and cannot be treated as employees as per provisions of section 2(9) of the ESI Act.

2. Learned Counsel for the appellant has relied upon the authority in the case of Regional Director, Employees' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd., , wherein the workers employed for the construction of the additional building of the factory were treated as employees as per section 2(9) of the ESI Act. Reliance has also been placed upon the authorities in the cases of Employees State Insurance Corporation Vs. Shri Onkar Nath Gupta--> . The Punjab Law Reporter 599 and Employees State Insurance Corporation, Chandigarh v. Oswal Woolen Mills Ltd., Millar Ganj, Ludhiana.

Section 2(9) of the ESI Act provides as under:--

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 apprentice engaged under the Apprentices Act, 1961 (52 art, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products apprentice engaged under the Apprentices Act, 1961 (52 of, the factory or establishment; or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), (and includes such person engaged as apprentice whose training period is extended to any length of time) 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):

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);

The perusal of the definition, shows that the employee must be employed for wages or in connection with the work of the factory. Now, the question would arise whether the nature of engagement for doing some temporary work for 2-3 days is to be treated as employment for wages. I am of the view that it is not so. Employment for wages means that it is some kind of regular employment being done for a considerable period. The engagement for 2-3 days cannot be treated as employment for a considerable period. As such, I do not find any illegality or infirmity in the impugned order.

Consequently, the present appeal is dismissed.