(2009) 03 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Employees State Insurance Corporation APPELLANT

Vs

Haryana Biological (P) Ltd. RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:
Employees State Insurance Act, 1948 — Section 2, 75, 76

Citation : (2011) 163 CompCas 202 : (2009) 154 PLR 703 : (2009) 2 RCR(Civil) 746

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of two F.A.Os bearing Nos. 433 and 442 of 1988 filed against the order dated 28.1.1988 passed by the Employees Insurance Court, Gurgaon. Since identical question of law and facts are involved therein, therefore, both the appeals are being disposed of by a common judgment. However, facts are taken from FAO No. 433 of 1988 titled "Employees State Insurance Corporation v. Haryana Biological (P) Ltd."

2. Briefly stated, the facts of the case are that the respondent filed a petition u/s 75 of the Employees State Insurance Act, 1948 (for short, ''the Act''), challenging the demand raised by the Employees State Insurance Corporation (for short, ''the Corporation'') for the period from 4/1983 to 11/1983 and also prayed for restraining the appellant/Corporation from recovering Rs. 5,636/- being contribution for the said period. In the petition, it was alleged by the respondent that the respondent is carrying the manufacturing process of pharmaceuticals. Vide letter dated 25.1.1979, they were informed by the appellant that their factory has come within the provisions of the Act w.e.f. 6.4.1978 and is being treated factory on the report of Insurance Inspector. It was maintained by the respondent that their factory is not covered under the Act as they had never engaged 10 or more persons on wages on any single day during the proceeding 12 months which is clear from the report of the Inspector of Corporation, who

had conducted inspection of the record of the respondent for the period 4/1980 to 1/1982. During the course of inspection, 7 persons were found working as employees whereas three were the Directors of the company. Since the Directors were counted as employees of the factory, therefore, the factory has been declared to have been covered under the provisions of the Act.

3. The petition was contested by the Corporation in which it was claimed that at the time of inspection, 10 persons were found working. Moreover, the Directors receiving remuneration were also employees u/s 2(9) read with Section 2(12) of the Act.

4. Learned Court below vide its order dated 28.1.1988 held that the Directors are not covered by the definition of Section 2(9) of the Act, therefore, provisions of the Act are not applicable to the case of the respondent.

5. Mr. Vikas Suri, learned Counsel for the appellant/Corporation has vehemently contended that the matter has now been settled by the Apex Court in the case of Employees'' State Insurance Corporation Vs. Apex Engineering Pvt. Ltd., . It is submitted that in the aforesaid case, the Apex Court concluded that even the Managing Director of a Company is an employee of the company within the definition of Section 2(9) of the Act.

6. In the case of Employees State Insurance Corporation (Supra), the Company was engaged in the manufacturing of motor seats. On 9.9.1969, the Board of Directors of the Company resolved to elect one of the directors Shri V.N. Dhanwate as Managing Director of the company and also conferred on him the authority to borrow, invest and lend the funds with certain limitation specified in the resolution. The Board of Directors of the Corporation, vide its resolution dated 23.5.1974, informed the company that Sh. Dhanwate being the Managing Director, who was also paid a regular remuneration was to be included alongwith the other 19 employees engaged for wages by the company for the purpose of declaring it as a factory u/s 2 Sub-section (12) of the Act, and vide its order dated 1.7.1974, it was ordered by the Corporation that the Company is covered as a factory u/s 2 Sub-section (12) of the Act.

7. Against the said decision of the Corporation, the Company filed an application u/s 75 read with Section 76 of the Act, before the Employees'' State Insurance Court, which was allowed on 5.9.1975 holding that the company is not covered by Section 2 Sub-section (12) of the Act as it had only 19 employees and Sh. Dhanwate cannot be treated to be an employee within the meaning of Section 2 Sub-section (9) of the Act and hence the company cannot be said to have employed 20 employees so as to be considered as a factory u/s 2 Sub-section (12) of the Act.

8. In the said case, the Apex Court after taking into account the definition of employee as provided u/s 2 Sub-section (9) of the Act and other judicial precedents, came to a conclusion that the Managing Director may have dual capacity because in the Act, there is nothing to indicate that a managing director

being the principal employer cannot be an employee. Thus, it was held that if the Managing Director is receiving remuneration for his work from the company, then he can be treated to be an employee within the meaning of Section 2 Sub-section (9) and shall also be counted amongst other employees in order to complete the numbers for the Act to prevail upon the factory.

9. In the present case as well, it was found by the Corporation''s inspector and it is admitted fact that three Directors were taking remuneration from the respondent, therefore, in view of the decision of the Apex Court as noticed above, I hold that those three Directors were also the employees of the Company and are to be counted with other 7 employees. Thus, the respondent comes within the purview of the Act.

10. In view of the above discussion, the present appeals filed by the Corporation are allowed. The impugned order passed by the Employees State Insurance Corporation, Gurgaon, is set aside and the petition filed u/s 75 read with Section 76 of the Employees'' State Insurance Act, 1948, is dismissed without any order as to costs.