
(2010) 12 P&H CK 0488

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 547 of 1989

Employees State Insurance Corporation

APPELLANT

Vs

Padma Bhawan Engineers (P) Ltd. and Others

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 2(17), 2(22), 2(9), 45A

Citation : (2011) 129 FLR 299 : (2011) 4 LLJ 222 : (2011) LLR 433 : (2011) 161 PLR 707 : (2011) 110 SCL 560

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—The questions involved in this appeal are (i) whether the Director/Managing Director of the company is an employee within meaning of Section 2(9) of the Employee's State Insurance Act, 1948 (for short "the Act")? (ii) Whether the remuneration paid to the Director/Managing Director of the company is wages in terms of Section 2(22) of the Act? (iii) Whether the Director/Managing Director of the company is the principal employer or the company is the principal employer?

2. The aforesaid questions have cropped up in this appeal, which is preferred against the order passed by the Employees Insurance Court, Ludhiana dated 28.2.1989 by which petition filed by the Respondent u/s 75 of the Act challenging the order passed by the Appellant u/s 45A of the Act considering the amount paid to the Managing Director of the company to be salary and the contribution of 4762.50 with interest from the period November 1984 to June 1986 was demanded, has been allowed on the ground that the Director/Managing Director of the company is not the employee in terms of Section 2(9) of the Act and salary paid to them is not wages in terms of Section 2(22) of the Act rather, the Director/Managing Director of the company is the principal employer in terms of Section 2(17) of the Act. In order to arrive at the aforesaid conclusion, the learned Court below had relied upon a Single Bench decision of

this Court in the case titled as Bombay Metal Works Pvt. Ltd. v. Regional Director Employees" State Insurance Corporation, Chandigarh and Anr. 1985 LIC 1318, wherein it was held that the Director/Managing Director is neither the employee nor salary paid to them comes within the purview of wages rather he is the principal employer in terms of Section 2(17) of the Act.

3. Learned Counsel for the Appellant has submitted that the question posed in the beginning of the appeal is now answered in the latest decision of the Supreme Court in the case of Employees" State Insurance Corporation Vs. Apex Engineering Pvt. Ltd., wherein it has been held that the Director/Managing Director, who is being paid salary falls within the definition of "employee" and is not the principal employer and his salary falls within the definition of wages.

4. In order to appreciate the controversy, the definition of "employee", "wages" and "principal employer" are required to be noticed, which are reproduced as under:

Section 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 an 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]:

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]

Section 2(17) - "principal employer" means -

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [the Factories Act, 1948 (63 of 1948)], the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;

Section 2(22) - "wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes [any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and] other additional remuneration, if any, [paid at intervals not exceeding two months], but does not 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 entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge;

5. Admittedly, in the present case, Vijay Kumar Dhall is the Managing Director of the Company M/s Padma Bhawan Engineers (P) Ltd. etc. who has been authorised by the Board of Directors through Resolution to file the suit before the trial Court. Meaning thereby the Managing Director was working under the authority of the Board of Directors and was not himself occupier of the factory which is owned by the company. It is also not in dispute that demand has been raised by the Appellant-Corporation on account of non-deposit of the contribution out of the salary paid to the Managing Director which had incurred interest as well. The issue was, thus, about the status of the Director/Managing Director of the company as to whether he would fall within the definition of "employee" or would have to be considered as principal employer to avoid the payment of contribution from the salary which is being treated as wages by the Appellant-Corporation.

6. In the case of Bombay Metal Works Pvt. Ltd (supra), the said company was

called upon by the Regional Director of the corporation to pay sum of "6026.58 towards the arrears of contribution. The said company filed petition u/s 75 of the Act, challenging the notice of recovery on the ground that the company had been regularly paying the contributions and nothing was due. It was pleaded that the Director of the Company was not covered by the Act as such no recovery could be effected qua the remuneration paid to them.

7. This Court, after taking into consideration the provisions of law observed that a reading of the definition of "principal employer" contained in Section 2(17) of the Act shows that the owner or occupier of the company includes the Managing Director or any other person responsible for the supervision and control of the establishment. The work of the limited company is done by the Director/Managing Director and therefore, he would come within the definition of "principal employer" and cannot be termed as "employee" within the meaning of Section 2(9) of the Act, therefore, payment made to the Director firm would not attract the contribution.

8. However, in the case Employees State Insurance Corporation (supra) relied upon by the learned Counsel for the Appellant, the Respondent-company M/s Apex Engineering Pvt. Ltd. was a private limited company. The Board of Directors resolved to elect one V.N. Dhanwante as Managing Director of the company, who was paid extra remuneration of Rs. 12,000/- for rendering services as the Managing Director. There were 19 employees in the company but the Corporation included Managing Director also as an employee to complete the quorum of 20 employees in order to cover the said company by the provisions of Section 2(12) of the Act. The said company was aggrieved against the order of the Corporation and filed petition u/s 75 read with Section 76 of the Act before the Employees' Insurance Court in which the plea was raised that the company/factory was not covered u/s 2(12) of the Act as it had only 19 employees and Shri Dhanwate cannot be treated to be an employee within the meaning of Section 2(9) of the Act. The ESI Court decided the lis in favour of the company which was challenged by the Corporation before the High Court. The Single Bench of the High Court agreed with the ESI Court and dismissed the appeal. The Corporation carried the matter in the Letters Patent Appeal but the Division Bench of the High Court also dismissed the appeal. The matter was then placed before the Supreme Court by way of Civil Appeal No. 3411 of 1996. In the aforesaid case of the Employees State Insurance Corporation (supra) the Supreme Court has held that the Director and the Managing Director, who is working for remuneration, shall be an "employee" u/s 2(9) of the Act and the salary paid to them fall within the definition of Wages u/s 2(22) of the Act. It was also held that the Director/Managing Director would not be a "principal employer" in terms of Section 2(17) of the Act until and unless it is proved that he is sole owner or occupier of the factory. In the present case, however, admittedly, the Managing Director of the Company is not the sole owner or occupier of the factory. Thus, it is held that the Director and the Managing Director is not the "principal employer".

9. I have heard both the learned Counsel for the parties and have perused the record with their assistance from which I have found that the judgment relied upon by the learned Counsel for the Respondents of a Single Bench of this Court is not applicable as it has been impliedly overruled by the judgment of the Supreme Court in the case of Employees State Insurance Corporation (supra).

10. In view of the aforesaid discussion, the question posed in the beginning is answered in affirmative in favour of the Appellant-Corporation and it is held that (i) The Director/Managing Director of the Company, who is working for remuneration is an employee u/s 2(9) of the Act (ii) The Director/Managing Director of the company, who is not the owner or the sole occupier of the factory is not the "principal employer" (iii) the salary paid to the Director/Managing Director of the Company, who is working in the factory, is Wages u/s 2(22) of the Act.

11. In view thereof, the present appeal is allowed and the impugned order passed by the Employees Insurance Court, Ludhiana is hereby set aside with costs.