(1981) 12 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 131 of 1976

Employees State Insurance Corporation APPELLANT

Vs

Shri Onkar Nath Gupta RESPONDENT

Date of Decision : 08-12-1981

Acts Referred:
Employees State insurance Act, 1948 — Section 75

Citation : (1981) 12 P&H CK 0014

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : K.L. Kapoor, for the Appellant; U.D. Gaur, for the Respondent

Final Decision : Allowed

Judgement

Gokal Chand Mital, J.—Onkar Nath Gupta who was carrying on industry in the name of Mohan Spinning Mills filed an application u/s 75 of the Employees State insurance Act, 1948 (hereinafter called the Act before the Employees Insurance Court at Rohtak to challenge certain demands made by the Employees State Insurance Corporation (hereinafter called the Corporation). Out of the demands made, the Employees State Insurance Corporation (hereinafter called the Corporation) the Employees Insurance Court, set aside the following demands by order dated 5-2-1976;--

(i) Rs. 21, 188. 34 claimed as contributions in respect of casual labour.

(ii) Rs. 2,788.10 on account of on wages paid to learners contributions apprentices.

(iii) Rs. 1,74,788.32 on account of contributions on reward payments made to the employees.

Against the aforesaid decision, the Corporation has come up in the present appeal.

2. The question whether a casual labourer is an employee or not came up for

consideration before a Full Bench of this Court in Employees State Insurance Corporation, Chandigarh v. Oswal Woollen Mills Ltd. (1980) 82 P.L.R. 656 it was ruled that a casual labourer is an employee and, therefore, on wages paid to the casual labour, contributions would be payable to the Corporation In view of the said ruling, the first question has to be decided in favour of the Corporation and against the respondent-mills Accordingly, the order of the Court below in this behalf is set aside and the demand of contributions amounting to Rs. 21,188.34, in respect of casual labour, made by the Corporation is restored.

3. Whether a learner or an apprentice can be considered as an employee of the mills is the next question which falls for consideration. The learner or apprentice has not been defined in the Act. However, the term ''apprentice'' has been defined in section 2 (a) of the Apprentices Act, 1961, to mean a person undergoing apprenticeship, training in a designated trade in pursuance of a contract of apprenticeship. Section 4 of that Act further provides that no person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless the contract of apprenticeship has been registered with the Apprenticeship Advisor. The court below, on a consideration of the matter, came to the following conclusion:--

Even if the learners do not fall within the Apprenticeship Act, it cannot be said that the alleged learners would automatically become employees of the mill earning wages. No provision has been cited by the Learned Counsel for the respondent that if any mill keeps any learner who does not fall within the provisions of the Apprentices Act, he would be deemed to be an employee.

It is admitted that the apprentices, or so-called learners, were not registered with the Apprenticeship Advisor. Once that is so, none of the employees can be called an apprentices, which word is almost Synonymous with the word learner. Therefore, none of the employees of the mills working at the relevant time can be called either apprentice or learner, with the result that they will have to be treated as employees of the mills and the wages paid to them would be considered as wages liable to contributions thereon under the Act With a view to avoiding reckless naming of employees as apprentices learners, the Apprentices Act, 1961 was framed and only those employees who were registered as apprentices in compliance with the provisions of that Act could be termed as such and none else. Since the respondent-mills in this case has failed to establish the same, there is no option than to hold that the so-called apprentices or trainees are the employees and the wages paid to them are liable to contributions under the Act Accordingly, the decision of the court below in this regard also is set aside and it is held that the demand of Rs. 2,788 10 made by the Corporation in respect of wages paid to the apprentices/learners was lawful and valid and the same is hereby restored.

4. Coming to the third point of contributions on reward payments made to the employees, the found facts of the case are that the rewards in question were paid not in terms of any contract of employment between the parties but were

merely a unilateral act of the mills to give incentive to its workers so that they show better output The mills could unilaterally withdraw the same Hence, in view of my decision in F.A.O. No. 57/1980 (E.S I. Corporation v. M/s. Gedore Tools India (P) Ltd. F.A.O. No. 57/1980) decided on 3rd December, 1981, the amount of reward payments to the employees in this case is not covered by the definition of "wages" and hence could not be taken into consideration while assessing the contributions payable by the respondent mills. The view taken by the court below in this regard is upheld.

5. For the reasons recorded above, this appeal is allowed in part and the order of the court below deleting the demands for contributions in respect of casual labour and the so-called learners apprentices is hereby set aside and the demands made by the Corporation with respect thereto are restored However, the order of the court below deleting the demand for contributions in respect of reward payments to the employees is sustained. Since the success is divided, the parties shall bear their own costs.

