
(1999) 03 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 1959 of 1998

Employees' State Insurance Corporation	APPELLANT
Vs	
Surya Printmac Industries, Faridabad	RESPONDENT

Date of Decision : 17-03-1999

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 75

Citation : (2000) 84 FLR 586 : (2000) 1 LLJ 387 : (1999) 122 PLR 300

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : B.S. Bhatia, for the Appellant; A.P. Bhandari, for the Respondent

Judgement

V.S. Aggarwal, J.—This is an appeal filed by Employees' State Insurance Corporation, Faridabad, hereinafter described as "the Corporation" directed against the order passed by the learned Civil Judge (Senior Division), Faridabad, dated June 11, 1998. By virtue of the impugned order, the learned trial Court had allowed the petition filed by the respondent (Surya Printmac Industries) u/s 75 of the Employees' State Insurance Act, 1948 short "the Act")

2. The relevant facts are that the respondent is a partnership concern and is running a unit of sheet fed offset machines. The respondent had contended that it had not employed 10 persons or more in the factory. Therefore, the unit of the respondent is not covered under the Factories Act. The respondent is an engineering unit and has been paying wages to its employees. Sometimes back, the respondent for sending its consignment outside provided work of loading and unloading to the labourers. At that time, the ESI Inspector had reached the factory and found four persons working. He terrorised the partner of the respondent and thereafter the appellant claimed that the respondent had 10 workers and fell within the definition of a factory. It was insisted that only six workers were working with the respondent.

3. The appellant had contested that claim and insisted that more than 10 persons

were working in the factory. When three Inspectors of the appellant Corporation visited on February 19, 1996, 10 persons, in fact, were found working in the factory, it was, therefore, asserted that the provisions of the Act were applicable to the factory of the respondent.

4. The learned trial Court recorded the evidence and held that the case of the respondent did not fall within the definition of Section 2(9) of the Act. There were not 10 persons working therein because the four persons were not the employees of the respondent. Accordingly, the findings were in favour of the respondent.

5. Aggrieved by the same, present appeal has been preferred.

6. The short question agitated has been as to whether the other four persons who were found working in the factory were, in fact, the employees or not ? According to the learned appellant's counsel, if they were casual workers, they would be employees as defined in Section 2(9) of the Act. While the respondent raised the plea that they were not even casual workers but had simply been called for a specific job for unloading and loading.

7. Full Bench decision of this Court in the case of Employees' State Insurance Corporation, Chandigarh v. Oswal Woolen Mills Ltd., Ludhiana 1980 Lab I. C. 1064 had considered the said controversy. Sub-section (9) to Section 2 of the Act had been considered. The relevant part of sub-section (9) to Section 2 of the Act reads as under :

"(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which

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;

xx xx xx xx"

8. Full Bench of this Court referred to above and considered the controversy as to whether the casual employee would be covered within the definition of sub-section (9) to Section 2 of the Act. The earlier view of this Court had been overruled and it was held that a casual employee would also be an employee for

the purposes of sub-section (9) to Section 2 of the Act. The findings were listed in paragraph 19 of the judgment which reads as under :

"To conclude it must be held that even a person casually employed in a factory or establishment is within the ambit of definition spelled out in Section 2(9) of the Act. The answer to the question posed at the outset is hereby returned in the affirmative."

9. This decision of the Full Bench of this Court was taken note of by the Supreme Court in the case of Regional Director, Employees' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd., . Therein there were certain construction workers who were casual workers. One of the questions for consideration was as to whether they would be employees under sub-section (9) to Section 2 of the Act. Full Bench decision of this Court was approved and the Supreme Court observed as under :

"In our opinion, the work of construction of additional buildings required for the expansion of a factory must be held to be ancillary, incidental or having some relevance to or link with the object of the factory. It is not correct to say that such work must always have some direct connection with the manufacturing process that is carried on in the factory. The expression "work of the factory" should also be understood in the sense of any work necessary for the expansion of the factory or establishment or for augmenting or increasing the work of the factory or establishment. Such work is incidental or preliminary to or connected with the work of the factory or establishment."

10. Keeping in view the abovesaid authoritative pronouncement, it must be held that the casual workers would be the employees for the purposes of sub-section (9) to Section 2 of the Act.

11. The sole question agitated is as to whether the four persons who were doing the loading and unloading work would also be the employees or not ? The appellants' learned counsel referred to the decision of this Court in the case of Modern Equipment Co. Ambala Cantt. v. The Regional Director, Employees State Insurance Corporation, Chandigarh 1984 86 P.L.R. 494. In the cited case, there were eight regular employees. One person in addition was employed as part-time gardener and another person as part-time sweeper. This Court held that they would be employees for the purpose of sub-section (9) to Section 2 of the Act. But it is obvious from the perusal of the cited judgment that it is distinguishable on its facts because the present case is not one where part-time employees who have been appointed regularly for doing part-time work were under consideration.

12. This Court in the case of The Employees State Insurance Corporation v. Malhotra and Co., Chandigarh 1981 Lab I.C. 475, was considering the controversy where repair work was done independently by a motor and scooter mechanic on the premises of the petrol pump with the permission of the principal employer. They were not paid any wages. Keeping in view that there was no control or understanding relating to the business of the establishment, this Court

held that the said mechanics did not fall within the ambit of employees. In fact, a clear distinction must be made between a casual worker and a person engaged for a specific item. The distinction is between employment and an engagement. If a person is engaged casually for a process unconnected with the operations of the establishment or some work which does not form integral part of such operations, he will not be an employee. There is no relationship of employer and employee. The employer has no control to take disciplinary action. He would only be engaged for the purpose. Kerala High Court in the case of Regional Director, E.S.I. Corporation v. P. R. Narahari Rao 1986 Lab I.C. 1981 took note of this distinction and held as under :

"The oft repeated distinction is that between an "employment" and "engagement". If a person is engaged casually for a process unconnected with the operations of the establishment, or some work which does not form the integral part of such operations, he may not be an employee since there would be no employer-employee relationship between them only in consequence of the casual engagement for purposes unconnected with the main operations of the establishment. On the other hand, if a person is employed, though casually and for a very short period of time, but in connection with the processes which are integral and connected with the incidental or preparatory to the operations of the establishment, then he may be an employee entitled to coverage under the Act. The Courts have made a still further distinction to the effect that in case of employment, however, short it be, the employer shall have the right of disciplinary control, right of supervision and oversight of the quality of and the manner in which the work is to be performed etc. Further ramifications have been evolved by the decisions to the effect that the employer shall have control over the employee in the sense that the latter shall be obliged to report for duty at specified working hours and seek and obtain permission for absence on any account, and that the employer shall have the power to grant or refuse leave etc."

13. Even the Supreme Court in the case of Employees' State Insurance Corporation v. Premier Clay Products 1995 SCC 162 held as under :

"There is no substance in this appeal filed by the Corporation. The respondent had hired some casual coolies for loading and unloading of its goods. The work itself was of a sporadic nature. The coolies were available for work to others and in fact on the very day worked for several others who engaged them. In the circumstances, the said coolies cannot even be called casual workmen. Hence no contribution is payable by the respondent to the Corporation on their benefit. The case of the appellant-Corporation was, therefore, rightly negatived by the Courts below. The appeal is dismissed with no order as to costs."

14. Identical are the facts herein. Four persons had simply been called for loading and unloading job on contract basis. They were not casual employees. It was a limited purpose job and it was thus a case where the persons engaged were not the employees, but, in fact, employed for a specific job. It was unconnected with the establishment. Consequently, keeping in view the dicta of

the decision of the Supreme Court in Employees' State Insurance Corporation case (supra), it must be held that the trial Court had rightly allowed the application of the respondent. There is no ground to interfere.

15. For these reasons, the appeal being without merit must fail and is accordingly dismissed.