(1974) 04 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 237 of 1973

Employees State Insurance Corporation, Chandigarh — APPELLANT

Vs

Onkar Nath Gupta — RESPONDENT

Date of Decision : 08-04-1974

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

Citation : (1974) 04 P&H CK 0040

Hon'ble Judges : Bhopinder Singh Dhillon, J;Bal Raj Tuli, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—The Employees State Insurance Corporation (herein after referred to as the Corporation claimed the sum of Rs. 11,567.84 Paisa from Messrs Mohan Spinning Mill Rohtak (hereinafter called the Mill), on account of Employer''s contribution under the Employees'' State insurance Act. 1948 (hereinafter called the ACT), in respect of the following amounts considering them to be wages or part of the wages of the workman :--

1. Stipends paid to learners ;

2. Reward paid to the employees ;

3. Amount paid to persons for the repairs and maintenance of the building etc., and

4. Amounts paid to various persons for loading and unloading of goods.

Shri Onkar Nath Gupta, principal employer of the Mill filed an application u/s 75 of the Act, alleging that the Mill was not liable to pay the amount claimed by the Corporation as it did not relate to wages of the workers. The application was contested by the Corporation and the following issues were framed by the Employees'' Insurance Court, Rohtak :--

1. Whether the employees in question are learners ?

2. If issue No. 1 is proved, whether the learners fall in the definition of employees under the Act ?

3. Whether the amount paid to the employees in question is reward ?

4. Whether any expenses have been incurred under the head Repairs and Maintenance etc. as mentioned in paragraph 4.C ?

5. Relief.

It is mentioned in the judgment of the employees'' Insurance Court that the first issue should have been :

Whether the learners in questions are employees ?

2. The learned Insurance Court decided all the issues in favour of the employer and held that the Corporation was not entitled is the amount clamed (sic) the Corporation was decreased not to make any recovery from he Mill by order dated February 11 1971. Against that order F.A.O. No. (sic) of 1971 was filed in this Court by the Corporation which was dismissed by a learned Single judge on December 21, 1971, and the present appeal under Clause 10 of the Letters (sic) directed (sic) that order.

3. The Learned Counsel for the appellant has not pressed the claim for contribution in (sic) paid to the (sic) and accepted the (sic) at they were not employees and no Employer''s contribution was payable in respect of the amounts paid to then as stipends. No (sic) on (sic) therefore, necessary to be made in this judgment.

With regard to the amount of reward, it has been stated by the Learned Counsel (sic) in ids report (Exhibit R.W. 2/6) (sic) had mentioned that a sum of (sic) paid the employees as overtime wages, (sic) good work bone by employees, but the account had been given the name of ''Reward'' by the employer and the various amounts were found booked in the ledger under that head No other evidence was brought on the record by the Corporation to prove that the payments were, in fact, not by way of reward but by way of overtime wages or wages for the extra work etc. It was stated at the bar by the Learned Counsel for the appellant that there were about 700 employees of the Mill and it is surprising that not one of them was examined as a witness to state whether the payments made to the employees by way of reward were actually as such or were wages paid for overtime work of extra work done by them. The Learned Counsel then submits that the payments shown in this account did not amount to remuneration paid or payable in cash loan employee in terms of his contract of employment, but that this amount is included in "other additional remuneration, if any, paid at intervals not exceeding two months" as mentioned, in section 2(22) of the Act. No evidence was brought on the record that the amounts shown as paid to the employees by way of reward were additional remuneration paid at intervals not exceeding two months. The learned Single Judge has rightly pointed out that the Corporation never challenged that some other amounts were paid under the ''Reward'' and, therefore, the plea put forth at the hearing of the appeal could not be allowed to be taken by the Corporation. In paragraph 4(b) of the application, the Mill had stated as under :--

As the ''Reward'' paid to the employees of the said Mill is not ''Wages'', as the term is defined in the said Act, therefore, employees ; contribution in respect of such reward is not payable under the said Act by the Applicant.

4. Paragraph 4 of the application consisted of sub-paragraphs (a) to (c) and the reply of the Corporation to paragraph 4 of the application was as under :--

That sub-paragraphs (a) to (c) of paragraph 4 are false, incorrect and under wrong assumption and hence denied in toto. The entire claim of Rs. 11567.84 Paise is legal, according to the provisions of the E.S.I. Act, and is well within the time of limitation. The wages on which employees'' contribution has been claimed are wages in terms of section 2(22) of the E.S.I. Act. The so-called learners are also covered and are employees within the meaning of the term ''employees'' as defined in the E.S.I. Act.

The learned Single Judge then referred to a decision of the Privy Council in AIR 1930 57 (Privy Council) wherein it has been observed that no amount of evidence can be looked into upon a plea which was never put forward. It was the duty of the Corporation to plead the facts which brought those payments to the employees within the definition of the word ''wages'' as defined in the Act. No such plea was taken nor was any evidence brought on the record. I am, therefore of the opinion that the decision of the learned Single Judge affirming the decision of the Employees'' Insurance Court on this point is correct and does not need any interference.

5. As regards the amount spent on repairs and maintenance of buildings etc., no evidence has been led as to the persons who executed the repairs. In order to constitute a person an employee of an employer, a contract of employment express or implied, has to be proved, indicating that the employer agreed to take the employee in his employment and the employee agreed to be his employee. There is no evidence that the Mill was maintaining any staff or department entrusted with the duty of effecting repairs and looking after the maintenance of the buildings. It might have been that independent persons from the market were engaged to do the repairs etc., on contract basis or on daily wages basis without any intention on the part of the persons effecting the repairs to be the employees of the Mill or the Mill engaging them as their employees. It is a matter of common knowledge that house owners engage persons who carry out annual repairs and white-washing etc." without becoming the employees of the former. The definition of ''wages'' in section 2(22) of the Act clearly indicates that there must be a contract between the parties so as to constitute them employer and employee. Every casual worker, for whatever purpose engaged, does not become

an employee of another unless the intention is clearly exhibited that both parties intended to bring about the relationship of employer and employee between them. No such evidence has been brought on the record and, therefore, it is not possible to hold that the persons who were engaged for "repairs and maintenance of the buildings etc." were the employees of the Mill in respect of whom Employee''s contribution was payable under the Act.

6. The casual workers engaged for loading and unloading of the goods received in the Mill and sent out of it have not been held to be the employee of the respondent Mill by the Employees'' Insurance Court and the learned Single Judge because there is no evidence on the record on the basis of which it can be held that any contract of employment, express or implied, had been brought about between them and the Mill. The labourers so employed or some of them could have been examined as witnesses in the case in order to show the kind of employment, if any, they had with the respondent-Mill but none was examined. On facts, the Employees'' Insurance Court and the learned Single Judge have come to the conclusion that the persons employed for loading and unloading of the goods were not the employees of the respondent-mill and, therefore, no appeal is competent because an appeal lies only if a substantial question of law is involved. I am, therefore, of the opinion that there is no merit in this appeal which is dismissed with costs.

B.S. Dhillon, J.

7. I agree.

