

(1986) 07 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 119/76

E.S.I. Corporation

APPELLANT

Vs

Jaipur Enterprises

RESPONDENT

Date of Decision : 17-07-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 39, 75

Citation : (1987) RLW 131 : (1987) 1 WLN 383

Hon'ble Judges : Inder Sen Israni, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Inder Sen Israni, J.—This is an appeal filed by the E.S.I. Corporation against the judgment dated 19-9-1975 passed by the learned Employees State Insurance Court, Jaipur in case No. E.S.I. 8/74 allowing the application filed u/s 75 of the Employees State Insurance Act, (here in after called "the Act") by the respondent.

2. A demand notice of the ESI Corporation was issued to pay contribution on the amount of Rs. 20,462/- paid as wages to the labourers during the period between 18-12-1972 to 29-1-1973 and 30 1-1973 to 30-4-1973. It was alleged that the labourers to whom the above amount was paid; were not connected with the manufacturing process of the factory, and were employed only casually for construction work of the factory. The applicant respondent raised a plea that the contribution has been rightly demanded because the labourers were engaged in manufacturing process of the factory and were engaged by the principal employer for the work. After hearing both the parties and recording evidence, the learned lower court held that the labourers were employed casually for the construction work and not in the manufacturing process of the factory and, therefore, no contribution was payable on the amount of wages paid to the labourers engaged in the construction work.

3. Learned lower court has relied upon the cases of Ram Chandran v. E.S.I. Corporation 1974 (29) FLR 267 and E.S.I. Corporation v. Gnandabika Mills Ltd. 1974 II LLR 530, where in it was held that any worker engaged in the construction of building will not be an employee within the meaning of Section 2(9) of the Act. I has been contended on behalf of the appellant that all the workers are included whether temporary or casual or permanent or even day to day under the definition of worker given u/s 2(9) and 2(12) of the E.S.I. Act.

4. Learned Counsel for the respondent has pleaded no instructions as inspite of his contacting the respondent he has not been able to receive any response from them. He even does not have file of the case with him.

5. Shri J.P. Gupta, learned Counsel for the appellant has stated that the above two rulings of Madras High Court have been discussed by several other High Courts and it has been held that causal workers are also included under the definition given u/s 2(9) of the Act. He has drawn my attention to the Full Bench decision of Punjab and Haryana High Court in E.S.I. Corporation, Chandigarh v. Oswal Woollen Mills Ltd. Ludhiyana and Ors. connected cases 1980 (41) FLR 232 , where in it has been held that even a person casually employed in the factory or establishment is within the ambit of definition spelled out in Section 2(9) of the Act. In this ruling the law laid down by the Madras High Court in the above referred two rulings has been dissented with. In the case of Regional Director, E.S.I.C., Bangalore Vs. Davangere Cotton Mills, it was held by the Karnataka High Court that the provisions of the Act applied to causal employees as well. In this ruling also the above mentioned two rulings of Madras High Court have been dissented. In the case of Andhra Pradesh State Electricity Board v. E.S.I. Corporation 1977 I LL 1 54 it was held that the casual workers were entitled to receive benefits of the Act and were covered by the definition given to the expression "Employee" in Section 2(9) of the Act. In the case of Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, , it was held by their Lordships of the Supreme Court that the definition of employee as given in Sections 2(9) and 2(17) covers even the employees of cycle stand, Canteens run in Cinema theatre under different contractors. Therefore, it was held that they were liable as principal employer for their contribution. It will, therefore, be seen that the definition of expression "employee" has been given very wide meaning as is evident from the rulings discussed above. The Act is a piece of beneficial legislation for the workers and whenever any two constructions are possible, then one favour of the person for whose benefit the Act has been enacted should be given effect to. More over, the scheme of the Act itself shows that the casual employee is also covered under the definition given u/s 2(9) of the Act. Section 39 of the Act is regarding contribution payable under this Act by the employers to the Corporation. Clause (3) of this section lays down that a work shall be the unit in respect of which all contributions shall be payable under this Act. That means that the contributions shall be payable on weekly basis. Clause (iv) of this section lays down that contribution payable in respect of each work shall ordinarily fall due on the last day of week. It further provides

that if an employee is employed for part of the work or is employed under two or more employments during the same work, the contribution shall fall due on such days as may be specified in the legislation. This clearly shows that the Act provided for contribution to be paid by the employers even in respect of such labourers which is engaged in work for part of a week only. This clearly shows that the legislature had in view the appointment regarding casual labourers which is employed for short duration and, therefore, this provision was made keeping in view such employment made by various employers. Therefore, this makes it abundantly clear that Clause (iii) deals with such employees who are regular in service, while Clause (iv) deals with casual labourers who are employed for temporary period.

6. In view of the above position of law discussed above, the contention of the respondent that they were not liable to pay contribution on the wages amount of Rs. 20462/- paid to the workers as they were casual employees fails to the ground and has no force.

7. In the result, the appeal is accepted with costs and the judgment of the learned lower court is set aside.