(1963) 02 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 25 of 1962

Fauja Singh APPELLANT

Vs

Employees State Insurance Corporation RESPONDENT

Date of Decision : 20-02-1963

Acts Referred:
Employees State Insurance Act, 1948 — Section 2, 39(3), 40, 40(1), 75(2)

Citation : (1963) 02 P&H CK 0011

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : B.R. Tuli, for the Appellant; K.L. Kapur, for the Respondent

Judgement

P.D. Sharma, J.—The Employees'' State Insurance Corporation through the Regional Director filed petition No. 7 of 1961 u/s 75(2) of the Employees'' State Insurance Act, 1948, (hereinafter to be referred to as the Act) in the Employees'' Insurance Court, Ambala, for the Recovery of Rs. 997/- in respect of employee''s contribution for the period from 1st October, 1958, to 30th June, 1960, against (1) Fauja Singh manager and principal employer of Messrs. O.P. Oberoi and Company, Abdullapur, and (2) Messrs. O.P Oberoi and Company, Abdullapur. The details of the amount in question are given in schedule ''A'' forming annexure to the petition. The Petitioner contended that Messrs O.P. Oberoi and Company Respondent No. 2 was a factory as defined in Sub-section (12) of Section 2, that Fauja Singh Respondent No. 1 was the manager and principal employer thereof as defined in Sub-section (17) of Section 2 of the Act, and that during an inspection of the Respondents'' factory by an inspector of the Corporation on 21st July, 1960, it was found that the Respondents had not paid employees'' contribution on a sum of wages amounting to Rs. 39,864-82 nP. which they were required to do u/s 40(1) of the Act.

2. The Respondents contested the above claim on the ground that the sum of Rs. 39,854.82 nP. entered in schedule ''A'' was not wages but represented the dues of the contractors paid to them for the work done outside the factory premises,

that the contractors were not their employees and that the claim was barred by time.

3. The following issues were framed:

(1) Whether the Respondent is liable to pay the sum claimed in the petition ?

(2) Is the claim within time ?

4. The Regional Director of the Employees ''State Insurance Corporation, Amritsar, demanded a sum of Rs. 518/- on account of employer''s special contribution on the wages paid by Fauja Singh, manager and principal employer of Messrs. O.P. Oberoi and Company,Abdullapur, during the years 1958-59 and 1959-60 (up to June, 1960), and on the Respondent''s failure to comply with the demand he moved the Collector for realisation of the sum in dispute as arrears of land revenue. Thereupon Fauja Singh instituted the present petition No. 20 of 1981 u/s 78 of the Act in the Employees'' Insurance Court, Ambala, for a declaration that the amount of Rs. 518/-was not legally due and recoverable from him and further prayed for an injunction restraining the Regional Director from realising the same from him. He contended that the amount on which employer''s special contribution had been assessed by the Regional Director was not paid as wages to employees but represented the payments made to contractors or casual labourers.

5. Both petitions Nos. 7 and 20 of 161 were tried together by the Employees'' Insurance Court as common questions of law and fact were involved therein. The Court held that the amount on which the employer''s special contribution and employee''s contribution had been claimed by the Employees'' State Insurance Corporation represented the wages paid to thy employees and not the amount due to any contractor. It also found that Rule 17 of the Employees'' Insurance Court Rules, 1949, which laid down that every application to the Court shall be brought within 12 months from the date on which the cause of action arose or as the case may be the claim became due, was ultra vires, and that Article 120 of the Indian Limitation Act governed the case and that being so both the claims in dispute of the Corporation were in time.

6. Fauja Singh and Messrs O.P. Oberoi and Company felt dissatisfied from the above orders of the Insurance Court and, filed two separate appeals Nos. 25 and 26 of 1932 u/s 82 of the Act which will stand disposed of by this judgment.

7. The learned Counsel for the Appellants contended that the sum of Rs. 39,864.822. nP on which the employee''s contribution and employer''s special contribution had been claimed by the Corporation represented the dues of contractors and not the amount of wages paid to the employees. In support thereof he relied on the statements of Fauja Singh (R.W.1), Inder Mohan Talwar (R.W.2) and Babu Ram (R.W.3) who deposed to the effect that the Appellants used to get packing cases manufactured through private contractors outside the premises of the factory and that the labourers were paid their dues by the

contractors and not by them. Fauja Singh (R.W.1) conceded that the wooden planks utilised in the manufacturing of packing cases were supplied by him to the contractors from the factory premises, that no account thereof was maintained, and that after an inspection of the factory by an inspector of the Corporation on 21st July, 1960, the contractors started working inside the premises of the factory. Inder Mohan Talwar (R.W.2) and Babu Ram (R.W.3) also made admissions on the above lines. The Insurance Court after a careful examination of the statements of these witnesses came to the conclusion that the work of manufacturing the cases by the so called contractors was either being done within the factory premises during the period in question or it was being carried outside the factory premises but under the supervision of the Appellants. This finding of fact is binding on me since u/s 82 of the Act an appeal to this Court was competent only if it involved a substantial question of law and not of fact.

8. Section 40 of the Act provides, "The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer''s contribution and the employee''s contribution. The terms ''employee'' and ''immediate employer'' have been defined in Sub-sections (9) and (13) of Section 2 of the Act respectively:

(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 or 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 ;

but does not include-

(a) any member of the Indian naval, military or airforces ; or

(b) any person employed on a remuneration which in the aggregate exceeds four hundred rupees a month.

(13) ''immediate employer'' in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is

ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer.

In view of the facts found by the Insurance Court and the provisions made in Section 40 and the definition of the terms ''employee'' and ''immediate employer'' as given in the Act the Appellants were responsible for payment of both the employer''s special contribution and the employee''s contribution in respect of every employee to the Corporation.

9. Rule 17 of the Employees'' Insurance Courts Rules, 1949, was held as intra vires by a Division Bench of this Court in case, Chanan Singh v. Regional Director, Employees'' State Insurance Corporation F.A.D. No. 17 of 1961 decided on 14th December, 1962. The rule provides:

17. (1) Every application to the Court shall be brought within twelve months from the date on which the cause of action arose or as the case may be the claim became due:

Provided that the Court may entertain an application after the said period of twelve months if it is satisfied that the applicant had sufficient reasons for not making the application within the said period,

There can be no dispute that the period of limitation for petition No. 7 of 1961 started from the date the claim became due. Section 39(3) of the Act lays down that a week shall be the unit in respect of which all contributions shall be payable under the Act. According to regulation 31 of the Employees'' State Insurance (General) Regulations. 1950, an employer who is liable to pay contribution in respect of any Employee shall pay those contributions within the following periods ;

(a) within 21 days of the last day of the wage period in which the contribution falls due;

(b) within 14 days of the termination of employment, irrespective of whether the employment is terminated with or without notice ;

(c) within 21 days after the termination of the contribution period in respect of every employee,

whichever period is earlier. The Corporation''s claim in petition No. 7 of 1961 became due within 21 days of the last day of the wage period in which the contribution fell due. Therefore such a claim for a period of one year and 28 days only was within limitation. It cannot legitimately claim extension of this period under proviso to Rule 17 (1) because even after having come to know from the inspection of the factory by the Inspector on 21st July, 1960, no tangible efforts were made to lodge the present petition soon after. In my opinion in such cases each day''s delay has to be sufficiently explained in a reasonable manner which has not been adequately done in the instant case. Petition No 7 of 1961 was instituted on 22nd June, 1961. It related to the claim for the period from 1st October. 1958, to 30th June, 1960. Therefore, the claim for the period from 25th May, 1960, to 30th June, 1960. only was in time. The Act or the Regulations and the Rules made thereunder have not provided any period of limitation for the Corporation to realise the arrears of employer''s special contribution as land revenue. Hence the Appellants cannot successfully urge that the Corporation''s prayer to the Collector for realisation of Rs. 518/- as arrears of land revenue was barred by time.

10. For the reasons given above, appeal No. 25 of 1962 is dismissed, while appeal No. 26 of 1962 is accepted to the extent that the Employees''s State Insurance Corporation could legitimately claim the employee''s contribution for the period from 25th May, 1960 to 30th June, 1960, and no more. The exact amount due to the Corporation for this period will now be calculated on the basis on which the entire claim had been assessed by the Insurance Court. The balance of the claim decreed by the Insurance Court is disallowed. The parties are left to bear their own costs in both the appeals.