**(2013) 04 P&H CK 0036**

**In the Punjab And Haryana At Chandigarh**

**Case No :** FAO No. 234 of 1988

Oswal Spinning and Weaving Mills APPELLANT

Vs

Employees State Insurance Corporation RESPONDENT

**Date of Decision :** 05-04-2013

**Acts Referred:**

**Citation :** (2013) 2 PLR 779 : (2013) 4 SCT 577

**Hon'ble Judges :** Daya Chaudhary, J

**Bench :** Single Bench

**Advocate :** S.K. Sandhir, for the Appellant; Vikas Suri, for the Respondent

**Final Decision :** Dismissed

# Judgement

Daya Chaudhary, J.—The appellant is aggrieved by the judgment dated 17.10.1987 passed by the Employees Insurance Court, Chandigarh, whereby the claim of the appellant for setting aside the order dated 16.11.1983 demanding contribution of amount to the tune of Rs. 72,082.60 along with interest of Rs. 7,588/- for the year 1980-81 and 1981-82 has been dismissed. The appellant is a factory registered under the Factories Act. The appellant was maintaining the record as required u/s 44 of the Employees State Insurance Act (for short, ''the Act). The grievance of the appellant in the appeal was that the amount claimed does not fall within the definition of wages and demand of any contribution relating to the previous wages cannot be raised after the lapse of benefit period and for that, the Act bars that no deduction for contribution can be made. A notice in form C-18 was issued claiming arrears of an amount of Rs. 72,082.60 which was duly replied. On that basis, it has been maintained that the impugned order is not in consonance with the provisions of the Act and, therefore, liable to be set aside.

2. The claim of the appellant was contested by the respondent. It was claimed that the amount sought relates to arrears which had not been paid. Even the notice issued to the appellant stipulates previous reference of the demand of

 

amount. It was also claimed that the order dated 16.11.1983 is legal and valid and in consonance with the provisions of the Act. On that basis, it has been claimed that the trial Court has rightly rejected the claim of the appellant.

3. On appreciation of evidence, the trial Court dismissed the suit filed by the appellant.

4. The first limb of the argument of learned counsel for the appellant is that in view of Section 68 of the Act, the respondent-Corporation cannot raise the demand for contribution amount with retrospective effect, inasmuch as, the order was passed in the year 1983 and the demand of amount for the years 1980-81 and 1981-82, which has already elapsed. The second limb of the argument of learned counsel is that the amount so claimed does not fall within the definition of wages and the persons connected with the wages were not the employees. On that basis, it has been argued that the impugned order is liable to be set aside.

5. Learned counsel appearing for the Corporation submits that the impugned order is legal and valid and, therefore, it has rightly been claimed the arrears which had not been paid.

6. Having given my thoughtful consideration to the arguments of learned counsel for the parties, I find no substance in the arguments of learned counsel for the appellant.

7. Before proceeding further in the matter, I would like to proceed with the issues step-by-step, like, wages, employees, competency of demand of contribution etc.

8. Section 2(22) of the Act defines the wages. The aforesaid section is reproduced as under:

(22) "wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes [any payment to an employee in respect of any period of authorised leave, lock- out, strike which is not illegal or layoff and] other additional remuneration, if any, [paid at intervals not exceeding two months], but does not include-

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge" Section 2(9) of the Act defines the term of employee which runs as under:

(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 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; [and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment but does not include:--

(a) any member so employed whose wages (excluding remuneration for overtime work) exceed [one thousand rupees) a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed 5[such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]

Section 68 of the Act defines the rights of the Corporation in case the employer fails or neglects to pay any contribution which reads as under:

68. Corporation''s rights where a principal employer fails or neglects to pay any contribution.-

(1) If any principal employer fails or neglects to pay any contribution which under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, the Corporation may, on being satisfied that the contribution should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either-

(i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer; or

(ii) twice the amount of the contribution which the employer failed or neglected to pay, whichever is greater.

(2) The amount recoverable under this section may be recovered as if it were an

 

arrears of land-revenue.

A conjoint reading of the aforesaid provisions clearly shows that the an employee who is employed on wages in the factory can be said to be employee duly employed by the employer. The ESI scheme itself provides that the employee working in a factory should be insured in a manner provided under the Act. For that purpose, the contribution is to be made by the employer and employee to the extent as specified under the Act. The employer is liable to deduct employees contribution from the wages bill and after making its contribution, as specified in the Act, shall pay the contribution to the Corporation as per the guidelines issued from time to time. That being the factual position, it is unambiguous that the contribution is mandatory for the employer to deposit with the Corporation.

9. Now coming to the argument of learned counsel that section 68 of the Act provides mat in case any benefit is extended to the employee, in that eventuality, the Corporation is entitled to recover the amount from the employer as stipulates in the aforesaid section. That factual aspect of the matter is not disputed. The aforesaid section has a rider that there should be satisfaction of the Corporation and on being satisfied the benefit, if any, may be extended to the employee. However, the said provision does not stop the Corporation to recover the amount of arrears which is mandatory for the employer and employee to pay the contribution at the specified rates to the Corporation. Although no benefit was claimed by the employee, but still the employer is required to pay the contribution to the Corporation. Thus, the argument of learned counsel for the appellant has no substance. In case the employer fails to pay the contribution, then the next step is to recover the arrears of amount for the previous tenure and, therefore, the argument of learned counsel that the Corporation cannot claim the arrears of amount for the previous years has no merit.

10. The argument of learned counsel that the persons being paid the wages were not the employees is meritless, as no evidence was led by the employer to show that the employees connected with the wages do not fall within the definition of employees. In view of the aforesaid discussion, the present appeal being devoid of any merit is hereby dismissed.