
(1984) 09 KAR CK 0003
In the Karnataka High Court
Case No : M.F.A. No. 568 of 1980

Regional Director, E.S.I. Corporation

APPELLANT

Vs

Fibre Mangalore (P) Ltd.

RESPONDENT

Date of Decision : 18-09-1984

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (22), 2 (9)

Citation : (1985) ILR (Kar) 390 : (1986) 1 LLJ 216

Hon'ble Judges : S.A. Rajasekaramurthy, J;G.N. Sabhahit, J

Bench : Division Bench

Judgement

Sabhahit, J.—This appeal by the Regional Director, E.S.I. Corporation, Bangalore, is directed against the order date 2nd February, 1980 made by the E.S.I. court in E.S.I. Application No. 3 of 1976 on its file, allowing the application and declaring that the establishment is covered by the E.S.I. Act, 1948 from 1st August, 1974 only and no amount of contribution is payable or recoverable from the applicant by way of contribution till that period.

2. The E.S.I. Corporation averred that when the Inspector went for inspection, he found that there were nearly 25 persons working in the factory and hence the factory was liable to pay the contribution from 12th January, 1983. This was resisted by the factory on the contention that 11 of them were regular employees and 14 persons were mere trainees or apprentice. Thereafter, the employer made an application before the E.S.I. Court at No. 3/76 for a declaration that the factory is covered only from 1st August, 1974 for the purpose of contribution to the E.S.I. Corporation and not earlier to that.

3. The E.S.I. Court raised the following issues :

(1) Whether the applicant proves that the factory is covered under the E.S.I. Act from 1st August, 1974 only ?

(2) Whether the trainees employed by the applicant are employees within the meaning of S. 2(9) of the E.S.I. Act and the amount paid to them is wages within

the meaning of S. 2(22) of the E.S.I. Act.

(3) What is amount payable, if any ?

(4) What order ?

4. During hearing A.W. 1 - B. S. Kamath was examined on behalf of the applicant. On behalf of the Respondent R.W. 1 - RG. Murdeshwar, E.S.I. Inspector was examined. In addition, two other witnesses, namely, R.W. 2 - K. Gopal Rao and R.W. 3 - T. Pattabhiraman were examined.

5. Appreciating the evidence on record, the E.S.I. Court held that mere trainees were not employees within the meaning of S. 2(9) of the E.S.I. Act and that therefore, there were only 11 employees at the relevant point of time and as such the factory was not covered under the E.S.I. Act for the purpose of Contribution till 1st August, 1974. The E.S.I. Court relied on a decision of the Supreme Court in the case "The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, wherein the question whether the apprentice could be included in the definition given under S. 2(9) of the E.S.I. Act came up for consideration. The Supreme Court observed in para-5 ruling thus : "The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another,

"The word "apprentice" is not defined in the Act, nor is it specifically referred to in the definition of "Employee" by either inclusion or exclusion."

In further observed : at Page 84

"The heart of the matter of apprenticeship is, therefore the dominant object and intent to impart on the part of employer and to accept on the part of the other person learning under certain agree terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert that apprentice to a regular employee under the employer."

(b) Again, the Supreme Court has observed in para-7 of the same judgment thus : at Page 85.

"It is therefore, inherent in the word "apprentice" that there is no element of employment as such in a trade or industry but only an adequate well-guarded provision for training to enable the trainee after completion of his course to be suitably absorbed earning employment as a worker. The fact that a trainee may be absorbed in the company where he is undergoing the training, is not relevant for the purpose of comprehending the content of the term."

That being so, it is obvious that the E.S.I. Court was perfectly justified in holding that mere apprentice or trainee would not be an employee as defined under S. 2(9) of the E.S.I. Act. We have no reason to differ. Hence, the appeal fails and is dismissed, No costs.