

(1991) 01 BOM CK 0061
In the Bombay High Court
Case No : F.A. No. 784 of 1987

Regional Director, Esic, Bombay

APPELLANT

Vs

Century Spinning and Weaving Co Ltd., Shahad

RESPONDENT

Date of Decision : 08-01-1991

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 38, 39

Citation : (1991) 63 FLR 336 : (1992) 1 LLJ 660 : (1991) MhLj 286

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Judgement

1. This appeal by the Insurance Corporation is directed against the judgment dated October 22, 1986, passed by the Insurance Court, directing the Corporation to refund the amount recovered towards the contribution during the period January 1, 1981 till June 30, 1981.

2. The Respondent-Company has been engaged in manufacture of Viscoso Rayon Yarn. Its employees were admitted to the benefits under the Insurance Scheme, since drawing the wages below Rs. 1,000/- as provided under sub-section (9) of Section 2 of the Employees' State Insurance Act, 1948. The Company paid the contribution due for the period from January 1, 1981 to June 30, 1981.

3. The Company on September 2, 1981 with its employees arrived at a settlement in pursuance of the Industrial Disputes Act. As per the settlement the pay scales of the employees came to be revised with effect from January 1, 1981. As a result, the monthly wages of the employees exceeded to Rs. 1,000/- from that date.

4. According to the Company, its recruits ceased to be an employee within the meaning of Section 2(9) of the Act. As such they were not liable to pay contribution with effect from January 1, 1981. The Company, therefore, made an application to the Corporation for refund of the entire amount paid towards the contribution during the said period. However, the Corporation rejected the

application.

5. The Company thereupon approached to the Insurance Court. The Company placed reliance on Clause 40 of the Regulations and urged that the amount was erroneously recovered. Upholding the claim so made, the Insurance Court by the impugned judgment directed the Corporation to refund the contribution.

6. Mr. Kapadia, the learned counsel appearing for the Appellant, urged that the revision in pay scales was after the contribution period as defined by sub-section (5) of Section 2. Hence, such revision, even if resulted in exceeding the monthly wages beyond the prescribed limit of Rs. 1,000/- covering the period of contribution, did not affect the position of the workers as an "employee" for the purposes of the obligation to make the contribution under Insurance Scheme. And the employer is liable to contribution at end of the wage period, as laid down under sub-section (4) of Section 39. During the period in question, personnel being within the definition of employee, the Corporation has rightly recovered the contribution. As such no mistake or error occurred in recovery of contribution pertaining to the said period. Submission of Mr. Kapadia is that Clause 40(1) of the Regulations has no application. The Insurance Court committed a patent illegality in relying on the said clause and directing the Corporation to refund the contribution. I find the submissions is well founded.

7. Mr. Rele, the learned counsel appearing for the Company, tried to support the impugned judgment. According to him, though the settlement was subsequent to the period of contribution, the revision in pay scale has been with retrospective effect from January 1, 1981. The Company was required to make the payment as per the settlement from January 1, 1981 and has in fact made the payment. He, therefore, contended that taking into consideration the definition of the term "wages" under sub-section (22) of Section 2 and the scheme laid down under Sections 38 and 39 of the Act, the "wages payable" could not be at variance. In the submission of the learned counsel, the term of wages payable must be consistent as regards the liability of the employer for making payment, in terms of settlement and also towards the contribution under the Insurance Scheme. According to Mr. Rele, the wages actually paid prior to the settlement if taken for the purposes of contribution and coverage, then it would be inconsistent with the term "wages payable" in accordance with the settlement dated September 7, 1981. He, therefore, urged that the wages made payable to the workers in terms of the settlement are to be taken into account for the purposes of coverage and liability of contribution. Since the wages payable exceed to Rs. 1,000/- the recovery of contribution by the Corporation was erroneous. The Insurance Court, therefore, is justified in directing to refund the amount of contribution relying on the said clause.

8. The Act of 1948 has been introduced for the welfare and benefit of the employees. However, the Act does not cover all the recruits in the establishment. The Act has extended the benefit only to those recruits who answer the description of term "employee" u/s 2(9) of the Act. Such recruits alone are to be

admitted to the benefits under the Scheme.

9. Undisputedly during the period of contribution viz., January 1, 1981 till June 30, 1981, the recruits of the "Company were complying with the description of the term "employee". As per term of the contract of employment as then in vogue, they have been paid wages as defined under sub-section (22) of Section 2 of the Act. And such payment would be decisive for the term "employee" u/s 2(9) and also for the purposes of Sections 38 and 39. The wages payable as envisaged under Sections 38 and 39 are qua to a period when the employees and the employer are liable to make contribution towards the Scheme. Owing to subsequent settlement dated September 7, 1981, the wages have become payable with effect from January 1, 1981. However, it did not in any manner alter the term "wages payable" during the period of contribution as per the contract of employment as then in vogue.

10. The "employee" as defined u/s 2(9) for the purposes of Insurance Scheme is a status enjoyed by the recruits of the establishment whereby they could secure the benefits under Employees' Insurance Scheme. Status as an employee is an aspect of definite significance. It is to be ascertained as per the test, qua the period of contribution. It cannot be permitted to dwindle either according to the negotiations in progress or subsequent settlement. There could be prospective change in the status as a consequence of such settlement or agreement. However, such status once conferred cannot be altered or abrogated with retrospective effect. As such the recruits of the Company between January 1, 1981 and June 30, 1981 who have enjoyed such status of an "employee", could not deem to be so i.e. "employee" during the said period as a result of revision of pay scales increasing their wages on September 7, 1981 even if made effective from January 1, 1981.

11. The effect of the settlement is that the recruits would be entitled to a benefit as per the revision in pay scales with retrospective effect i.e. January 1, 1981. However, the status as an employee conferred on them for the purposes of the benefits under the Insurance Scheme would remain the same. The settlement in its result could not withdraw the status attached to the recruits for particular period.

12. The Insurance Court has completely misdirected itself in placing reliance on Clause 40(1) of the Employees' State Insurance (General) Regulations, 1950. The Insurance Court lost sight that in recovering the contribution the Corporation has neither committed any mistake nor the recovery was in any manner erroneous. As such resorting to the said provision by the Company was wholly misplaced. In view of this, the impugned judgment of the Insurance Court suffers from patent illegality and the same is liable to be set aside.

13. The appeal is allowed. The order dated October 22, 1986 is hereby set aside.

14. In view of the judgment, the Civil Application is disposed of.