
(2013) 08 P&H CK 0677

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 903 of 1986

Regional Provident Fund Commissioner

APPELLANT

Vs

Universal Fastners

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2014) 141 FLR 392 : (2014) 2 LLN 244 : (2014) LLR 192

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Ajay Singla, for the Appellant;

Judgement

Paramjeet Singh, J.—Instant regular second appeal has been filed impugning the judgment and decree dated 4.9.1984 passed by the learned Sub Judge, 1st Class, Chandigarh whereby suit filed by the respondent-plaintiff was decreed with costs and also the judgment and decree dated 23.9.1985 passed by the learned District Judge, Chandigarh whereby appeal preferred by the appellant-defendant against the judgment and decree dated 4.9.1984 has been dismissed. Shorn of unnecessary details, the facts relevant for disposal of the present appeal are to the effect that the respondent-plaintiff (hereinafter referred to as "respondent") filed suit for declaration that the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short "the Act, 1952") are not applicable to the respondent and the order dated 20.6.1983 of the appellant-defendant (hereinafter referred to as "appellant") is null and void. It is averred in the plaint that at the relevant time, the respondent was running a factory in the name and style of M/s. Universal Fastners and the said factory was located at 359, Industrial Area, Chandigarh and Mr. S.S. Gujral was the Manager of the same. It is further averred that establishment of the respondent was registered under the Factories Act and had a licence to run the said factory granted by the Administration of Union Territory, Chandigarh with a direction that the establishment must have less than 20 persons. This factory was also covered under the provisions of Employees' State Insurance Act and this coverage had

been made u/s 1(5) of the Employees' State Insurance Act being an establishment employing more than 10 persons, but less than 20. The trial court after considering the pleadings framed the following issues: 1. Whether the plaintiff is entitled to the declaration

2. Whether the Court has jurisdiction? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the suit has not been verified by proper authorised person? OPD

5. Relief.

The trial court after considering the evidence decreed the suit of respondent vide impugned judgment and decree dated 4.9.1984 holding that 20 or more persons were never employed regularly by the respondent in a major part of the year on account whereof, it was not covered by the Act, 1952 and the impugned order dated 20.6.1983 was set aside. The appellant preferred an appeal against the impugned judgment and decree dated 4.9.1984 which has also been dismissed vide impugned judgment and decree dated 23.9.1985 by the learned lower Appellate. Court. Hence, the instant appeal.

2. The case of appellant is that when the said factory was checked on 6.2.1982 by two Provident Fund Inspectors, they found 21 persons working in the factory. The signatures/thumb impressions of majority of the workers working in the factory were obtained. It was also averred that the suit was not maintainable in the present form. It was the further stand of the appellant that according to the Act, 1952, the establishment to be covered under the Act, 1952 must employ 20 or more persons. On 6.2.1982, when the factory was inspected, it was found that the respondent had employed 21 persons as a result of which the provisions of the Act, 1952 were applicable.

3. When this appeal was admitted, no substantial question of law was framed, nor the learned counsel for the appellant has been able to raise any substantial question of law during the course of arguments. Yet, I have heard learned counsel for the appellant and perused the record of the courts below.

4. From the perusal of record, it is clear that the respondent plaintiff was having less than 20 workers at his establishment during ordinary course of business, however, on one day, it 20 or more persons were found working that does not mean that they had been permanently employed for everyday. The findings of the Courts below are based on the decision of the Hon'ble Supreme Court rendered in The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan, In Provident Fund Commissioner. (supra), the Hon'ble Supreme Court had occasion to consider the word "employment" whereof the Hon'ble Supreme Court made following observations:

The word "employment" must therefore, be construed as employment in the regular course of business of the establishment, such employment, obviously

would not include employment of a few persons for a short period on account of some passing necessity or more temporary emergency beyond the control of the company.

5. The Hon''ble Supreme Court further observed as under:

Considering the language of section 1(3) in the light of foregoing discussion it appears to us that employment of a few persons on account of some emergency or for an abnormal contingency which is not a regular feature of the business of the establishment and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution towards the provident fund under the Act, would be covered by this definition.

6. The ratio of the said ruling of the Hon''ble Supreme court has been followed by this Court in M/s. Tip Top Drycleaners and Dyers, Amritsar Vs. The Union of India and others

7. In these circumstances, in order to prove a case in accordance with provisions of the Act, 1952, it is essential to show that 20 or more persons must be employed regularly in major part of the year. The factory cannot be covered under the Act, 1952 simply because on one day more than 20 persons were found working. There must be regular employment of 20 or more than 20 persons in the major part of the year in order to cover the respondent. The case-law Ratan Lal v. The Regional Provident Fund Commissioner, New Delhi and another, 1977 Lab LC 1765 cited by the learned counsel for the appellant during the course of arguments is found distinguishable to the facts and circumstances of the present case. Both the Courts below have recording concurrent finding of fact. In view of above, this Court is of the view that there is no perversity or irregularity in the findings of fact recorded by both the courts below and no question of law much less substantial question of law is involved in the present case.

Dismissed.