

(1994) 04 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3162 of 1980

R.P. Chopra and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(5), 2(1)

Citation : (1994) 107 PLR 558

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : Balram K. Gupta, for the Appellant; G.S. Cheema, A.A.G. for Respondent Nos. 1 and 2 and K.L. Kapur, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—The petitioners, who are members of the ministerial staff of the Punjab Roadways, Chandigarh and are governed by the Punjab Roadways (Ministerial) State Service Class III Rules, 1977 (for short, the rules), have challenged the orders by which the Employees' State Insurance Act, 1948 (for short, the Act) has been made applicable to the drivers, Conductors, ministerial staff and Inspector staff of Punjab Roadways, Chandigarh, in this petition under Articles 226/227 of the Constitution of India.

2. The petitioners are the members of the ministerial staff of Punjab Roadways, Chandigarh. Petitioner Nos. 1 to 12 were appointed to the service prior to November 1, 1966 while petitioner Nos. 13 to 44 were appointed after that date. The Act applies to establishment or class of establishments as notified by the appropriate Government. The Government of Punjab issued notification extending the provisions of the Act to certain specified class or establishments situated within the municipal limits of Amritsar, Ludhiana and Jalandhar with effect from March 30, 1975. The Road Motor Transport establishment was also brought within the purview of the Act. The establishment of the Punjab Roadways, Chandigarh is not covered under notification No. 3659-IHBI-II/75/73,

dated March 26, 1975 issued by the Government of Punjab. The General Manager, Punjab Roadways, Chandigarh vide Office Order No. 3289/ECM, dated April 8, 1980 intimated that the Act has been made applicable to the drivers, Conductors, ministerial staff and Inspector staff of the Punjab Roadways, Chandigarh. The principal grouse of the petitioners was that the appropriate Government has not issued any notification extending the provisions of the Act to the employees of the Punjab Roadways, Chandigarh. In the absence of any notification issued by the appropriate Government, the Director, State Transport, Punjab, could not apply the provisions of the Act to the employees of the Punjab Roadways, Chandigarh. The petitioners are the employees of the Punjab Government and it is only the Punjab Government, which can apply the provisions of the Act to its employees working under the Punjab Government at Chandigarh.

3. Written statement has been filed on behalf of the State of Punjab and the Director, State Transport, Punjab. It is admitted that the petitioners are governed by the Rules and were entitled to the medical benefits provided by the Punjab Government to its employees till September 4, 1976. The provisions of the Act have been extended to the Road Motor Transport Establishment in the Union Territory of Chandigarh vide notification No. 10102/SAIH-76/1G308, dated August 30, 1976. The Chandigarh Administration has applied the provisions of the Act to the Road Motor Transport establishment in the Union Territory, Chandigarh. The establishments of Punjab Roadways, Chandigarh-I and II are located in Chandigarh and they come within the purview of the notification. The State of Punjab sought exemption from the scheme under the Act for the employees of the Punjab Roadways services Chandigarh, which was turned down by the Regional Office, Employees' State Insurance Corporation, Chandigarh, vide memo No. PB-Exempt/Misc/77-78/74, dated September 6, 1979 keeping in view the instructions of the Government of India, Ministry of Labour, Employment & Rehabilitation (Department of Labour and Employment) Information was given to the Director, State Transport Corporation, Patiala that the exemption sought for the employees of the Punjab Government Roadways and Pepsu Roadways Transport Corporation from the provisions of the Act was declined and the provisions of the Act have to be complied with.

4. Learned counsel for the petitioners submitted that u/s 1(5) of the Act, the State Government, with the prior approval of the Central Government, can extend the provisions of this Act to any establishment or class of establishments.

5. The petitioners are the employees of the State of Punjab and the appropriate Government under the Act in relation to them will be the Government of Punjab and it is the State of Punjab, who with the prior approval of the Central Government, can by notification extend the provisions of this Act to the Punjab Roadways, Chandigarh. It will be relevant to reproduce Sub-section (5) of Section 1 and Sub-section (1) of Section 2 of the Act:

Sub-section (5) of Section 1:

"The appropriate Government may, in consultation with the Corporation and" where the appropriate Government is a State Government, with the approval of the Central Government), after giving six months" notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise."

Sub-section (1) of Section 2:

"appropriate Government" means, in respect of establishments under the control of the Central Government or (a railway administration) or a major port or a mine or oil-field, the Central Government, and in all other cases, the (State) Government.

6. A conjoint reading of these provisions indicate that the appropriate Government in respect of establishments under the control of the Central Government or a railway administration is the Central Government and in all other cases, the State Government. The Punjab Roadways, Chandigarh is a establishment, but not under the control of the Central Government. If it is not under the control of the Central Government, the appropriate Government in relation to the Punjab Roadways, Chandigarh is the State Government and it is the State Government, which can by notification apply the provisions of this Act to establishment viz. Punjab Roadways, Chandigarh. Concededly, the Government of Punjab has not issued any such notification applying the provisions of this Act to the Punjab Roadways, Chandigarh. The Chandigarh Administration has the right to extend the provisions of the Act to the establishment under its control. The Punjab Roadways is not under the control of the Chandigarh Administration and as such, the Chandigarh Administration could not by notification apply the provisions of this Act to the employees of the Punjab Roadways, stationed at Chandigarh. Till such time a valid notification is issued by the State Government, the provisions of the Act cannot be applied to the employees of the Punjab Roadways, Chandigarh. However, it is open to the appropriate Government viz. Punjab Government to apply the provisions of the Act to the employees of the Punjab Roadways, Chandigarh. Till such time a notification under the Act cannot be applied by an office order.

7. For the reasons stated above, the writ petition succeeds and it is declared that the Act is not applicable to the employees of the Punjab Roadways, Chandigarh.