**(2010) 04 RAJ CK 0031**

**In the Rajasthan High Court**

RSRTC APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 22-04-2010

**Acts Referred:**
Employees State Insurance Act, 1948 — Section 75

**Citation :** (2010) 3 LLJ 638

**Hon'ble Judges :** Narendra Kumar Jain, J;Meena V. Gomber, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

1. Heard learned Counsel for the parties.

2. This special appeal is directed against the impugned judgment dt.1st May, 2003 passed by learned Single Judge whereby writ petition of the appellant, which was directed against impugned orders of recovery of E.S.I Contribution [Ann.4 to Ann.10], was dismissed on the ground of efficacious and alternative remedy by way of appeal available to the petitioner/appellant before the Employees'' State Insurance Court under the provisions of Employees'' State Insurance Act, 1948 [hereinafter referred to as ''Act of 1948''].

3. The submission of learned Counsel for appellant is that vide notification dt.23rd December, 1996 issued by Government of India [Labour Department], the provisions of Rules 50 and 51 of E.S.I [Central] Rules, 1950 were amended and the wage limit of Rs. 3,000/-was substituted to Rs. 6,500/-for the purpose of applicability of the Act and share of contribution of employee as well as employer, both were also enhanced. On the basis of above notification, the appellant-Corporation issued an order dt.18th January, 1997 in compliance thereof. However, number of employees of the appellant- Corporation challenged the order dt.18th January, 1997 before the Single Bench of this Court by way of Writ Petition Nos. 757/97, 547/97, 546/97 and 692/97 wherein operation of order dt.18th January, 1997 was stayed vide order dt.31st January, 1997 whereupon

 

the appellant did not deduct and deposit contribution of employee as well as employer both with the respondents. However, the writ petitions were dismissed on 28th April, 1998 with liberty to the petitioners to move an application for exemption from the Scheme, if so advised, under the provisions of Act, 1948.

4. He further contended that an application was moved by appellant for grant of exemption, but the same was also dismissed vide order dt.9th August, 2001. Since appellant could not comply with the provisions of Act of 1948 by depositing ESI Contribution because of interim stay order passed by this Court on 31st January, 1997, therefore, the recovery for the period from 31st January, 1997 till the date of dismissal of the writ petitions i.e. 28/04/1998 was bad in law and without considering the said fact, the writ petition has been dismissed only on the ground of availability of alternative remedy by way of appeal, therefore, the impugned order passed by learned Single Judge is liable to be set aside.

5. Per contra, learned Counsel for respondents contended that impugned orders [Ann.4 to Ann.10] were appealable u/s 75 of the Act, 1948, therefore, the learned Single Judge has not committed any illegality in dismissing the writ petition of the petitioner. He, therefore, contends that there is no merit in the appeal, the same is liable to be dismissed.

6. We have considered the submissions of the learned Counsel for the parties. During the course of arguments, the learned Counsel for appellant admitted that even before amendment made in rules 50 and 51 of Rules of 1950 vide notification dated 23.12.1996, the provisions of the Act of 1948 were applicable and appellant was and is complying with the provisions of the Act. The application filed by appellant for grant of exemption from the provisions of the Act of 1948 was dismissed vide order dated 9.8.2001, which was also not challenged by way of an appeal or otherwise. The sole and limited submission of learned Counsel for appellant is that during the period from 31.1.1997 to 28.4.1998, the appellant could not deposit the ESI Contribution because of interim stay order dated 31.1.1997 passed in SBCWP Nos. 757/97, 547/97, 546/97 and 692/97, therefore, recovery notice of that period is illegal. It is relevant to mention that aforesaid writ petitions were dismissed vide order dated 28.4.1998 and no specific order in this regard was passed, therefore, it was a duty of appellant to deposit the ESI Contribution for that period immediately after dismissal of writ petitions. The non-compliance of provisions of Act because of interim stay order may be relevant for the purpose of awarding damages/ penalty and not for ESI Contribution. The major part of disputed amount relates to employer''s contribution, which is to be deposited by appellant only. If there are some disputed questions of facts with regard to determination of amount or penalty etc., then the same can very well be agitated before appellate Court. The explanation, for not filing an appeal that period of limitation has expired and certain amount is required to be deposited before filing an appeal, is not justified and legally maintainable.

7. In view of above discussions, we are of the view that learned Single Judge was

 

right in dismissing the writ petition of the appellant on the ground of alternative and efficacious remedy by way of appeal available to the appellant. Hence, we do not find any merit in this special appeal and the same is, accordingly, dismissed with no order as to costs.

8. It is made clear that in case an appeal is preferred by appellant then observations made hereinabove will not come in the way of appellate Court while deciding the appeal and the same will be decided in accordance with law.