
(2016) 06 MP CK 0033

In the Madhya Pradesh High Court

Case No : W. P. No. 7698 and 7806 of 2015

Sanskar Shiksha Samiti

APPELLANT

Vs

Labour Department

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

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

Citation : (2016) 150 FLR 757 : (2016) LabLR 1110

Hon'ble Judges : Vivek Rusia and P.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Shri Rahul Laad, Learned Counsel, for the Appellant; Shri R. K. Mangal, learned G.A, Shri G.S. Patwardhan, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Vivek Rusia and P.K. Jaiswal, JJ.—Heard.

By this writ petition, the petitioner is challenging the legality and validity of the notification dated 19.05.2011 issued under Section 1(5) of the Employees State Insurance Act (in short "the ESI Act"), 1948, whereby the provisions of ESI Act became applicable to educational institutions. The main contention in the petition is that the educational institution is not indulging in manufacturing of any product and it is not covered under the purview of factory, whereas the ESI Act is applicable upon factories. It has further been stated that the educational institutions are running on no profit no loss and by creating an additional burden to the educational institutions to pay contribution against their employees under the ESI Act which create hurdle to provide free education as provided under Article 21A of the Constitution of India.

2. In reply, Shri R.K. Mangal, learned GA has drawn our attention to the Division Bench decision of Kerala High Court in the case of CBSE School Management Association v. State of Kerala, wherein the same issue regarding applicability of ESI Act on educational institutions by virtue of notification issued under Section

1(5) of the ESI Act has been raised and the Division Bench of Kerala High Court has upheld the notification) Annexure-R1/1). The same issue has also been raised before the Division Bench of Punjab & Haryana High Court in the matter of Seth Nand Lal Bajaj Educational Charitable Society, Chandigarh v. State of Punjab and another reported in 2015 Labour IC 2991, the Division Bench has upheld the validity of the notification (Annexure-R1/2). Paras-19, 20, 23 and 28 of the judgement of Punjab & Haryana High Court reads as under :-

19. As per law laid down in the judgments referred to above, it was observed that it is not justifiable to say that there cannot be any establishments of a character other than industrial, commercial or agricultural, as alleged and asserted by counsel for the appellant. It was rightly said that the words "establishments" do not take colour from the word "industrial", "commercial", "agricultural", as used in the above said provision. Otherwise also, the Act being a social legislation, is to be interpreted in a way that it helps the teachers/employees and not the management.

20. By making reference to the provisions of Section 1 (5) of the Act, it was said that the Government has ample power to apply provisions of the Act to any establishment, including the educational institutions.

23. The counsel would make reference to the beneficial nature of this legislation to urge that the word should not be given any restrictive meaning and rather should be given an expanding meaning to achieve the socio economic goal, which was the aim for enacting the said legislation. This Act aims to attain the goal of socio economic justice as are enshrined in some of the directive principles of our Constitution. Article 41 requires of a State to develop and make effective provision for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42 says that the State shall make provisions for securing just and humane conditions of work and for maternity relief, whereas Article 43 requires of the State to make an endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. These provisions are aimed at establishing a socialistic state as envisaged which would endeavour to secure additional standard of life and economic (sic) to the working people.

28. Otherwise also, there is nothing on record to show that the financial condition of the appellant is such that it will not be in a position to bear very small financial burden to provide medical and insurance facilities to its employees. Nothing has been brought on record to say that if the scheme is implemented qua the appellant institution, it would not be in a position to run educational activities.

3. Against the judgment of Kerala and Punjab & Haryana High Court dated

03.07.2009 passed in W. P. No.20279/2008, a petition for Special Leave to Appeal (C) No(s).28285/2009 was filed by the Kerala Unaided School Manager Association and the Apex Court vide order dated 15.03.2016 dismissed the Special Leave Petition. The order dated 15.03.2016 reads as under :-

Upon hearing the counsel the Court made the following

ORDER

Heard learned counsels for the parties and perused the relevant material.

We do not find any legal and valid ground for interference. The Special Leave Petitions are dismissed.

As a sequel to the above, all pending interlocutory applications are disposed of.

4. The dictum of Kerala High Court and Punjab & Haryana High Court has been affirmed by the Apex Court. The issue in the present petitions no longer survives and in the light of aforesaid judgments, the present writ petitions are liable to be dismissed and are accordingly, dismissed.