



CMA(MD).No.876 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.03.2023

PRONOUNCED ON : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.876 of 2014
and M.P(MD).No.2 of 2014

1.Palani Andavar Cotton & Synthetic
Spinners Ltd., Unit 2 represented by
Its Managing Director
V.Sathyanathan

2.V.Sathyanathan
Managing Director
25-A, Manickam Street
Udumalpet
Thirupur District

... Appellant

Vs

Employees State Insurance Corporation
Through its Deputy Director having office
At Sub -Regional Office
1-B, Old Post Office Street
Tallakulam
Madurai 625 002

....Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, to set aside the judgment and decreal order of the Employees State Insurance Court (Labour Court) Madurai in ESIOP.No. 30 of 1998 dated 30.08.2011 and allow the appeal.



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For Appellants : Mr.V.O.S.Kalaiselvam

For Respondent : Mr.I.Pinaygash

J U D G M E N T

The present appeal has been filed by the employer challenging the order passed by the E.S.I.Court confirming the order passed by the E.S.I.Corporation under Section 45-A of the E.S.I.Act.

2.The first appellant employer is a Textile Mill which had commenced its production in March 1992 and admittedly, the said establishment is covered under the E.S.I.Act. A notice was issued by the employer on 05.12.1996 to show cause why the contribution should not be recovered for the omitted wages of the apprentices for the period between March 1992 to September 1995 to a tune of about Rs.1,64,611/- . The said notice was based upon an inspection conducted on 13.09.1995 and on 02.11.1995 wherein the Inspector of the Corporation had reported that the employer had booked most of the workers as apprentices and the salary paid to those apprentices was not considered for the payment of contribution.



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3.The employer had submitted his reply on 12.08.1997 disputing the said claim and requested for personal hearing. Several days the matter was adjourned and the employer had produced certain records on 05.03.1998 and 24.03.1998 and he filed a detailed objection on 24.03.1998.

4.As per the objection submitted by the employer, the apprentices were engaged under the certified standing order of the Mill which provides for engagement of the apprentices for a period of 3 years. According to the employer, the apprentices were given training and they are not paid any bonus but they were paid only ex-gratia.

5.After considering the objections raised by the employer, the Corporation had passed an order under Section 45-A of the Act on 03.07.1998 rejecting the objections and demanded contribution of a sum of Rs.1,64,611/-. The said order was challenged by the management before the E.S.I. Court in E.S.I.O.P.No.30 of 1998.

6.Before E.S.I. Court, on the side of the employer, 4 witnesses were examined and 14 documents were filed. On the side of the E.S.I.Corporation, 1 witness was examined and 2 documents were marked.



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7.The E.S.I.Court after considering the oral and documentary evidence, arrived at a finding that even the Labour Officer of the concerned establishment (who was examined as PW1) was not in a position to state how many employees are working at the relevant point of time and out of them how many of them were apprentices. The establishment has not placed on record any contract entered into with the apprentices over a 3 years period which would disclose the terms of employment. The E.S.I.Court further found that it is an admitted fact that none of the persons have been appointed under the Apprenticeship Act, but they have stated to have been appointed only as per Model Standing Order. Those workers were employed independently along with regular employees. However, they have been designated as apprentices, the records indicate that they are real workmen. On the basis of the above said findings, the E.S.I.Court dismissed the petition. Challenging the said order, the present appeal has been filed by the employer.

8.The learned counsel for the appellants had contended that as per Section 2(9) of the E.S.I.Act, the apprentices engaged under the Apprentices Act 1961 and the apprentices engaged under the Standing Order of an establishment are completely exempted from the coverage of



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the Act. Therefore, according to the learned counsel for the appellants, the apprentices who are engaged under the Model Standing Order of the establishment are completely exempted from the purview of the Act. He had further pointed out that they are not paid wages and they are being paid only stipend.

9.The learned counsel had further contended that no bonus is being paid to the said apprentices, but only exgratia amount is being paid for maintaining industrial peace. Therefore, they do not form part of the employees who are coverable under the E.S.I.Act. The inspection report do not reflect the correct position, the employer has placed on record all the materials before the E.S.I.Court which were not properly appreciated. Therefore, he prayed for allowing the appeal.

10.Per contra, the learned counsel appearing for the respondent had contended that the Labour Officer of the employer has been examined as PW1 who categorically admitted that he is not aware of the total number of employees in the establishment. He is not even aware of the number of apprentices in the said establishment. Therefore, it is clear that the employer is not maintaining any distinction between the regular employees and the apprentices. He had further contended that no



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document has been placed either before the Corporation or before the E.S.I.Court to prove that those persons were engaged only as an apprentices under the Model Standing Order and not as an employee . He had further contended that as per the Standing Order, the establishment should enter into an agreement with the apprentices for a period of 3 years. However, no such agreement has been marked on the said of the employer. In case, if the apprentices are engaged, they have to be regularly assessed and tests have to be conducted. There is no proof for the same. Therefore, it is clear that under the guise of apprentices, those persons were engaged only as regular employees in order to avoid contribution under the E.S.I.Act.

11.I have considered the submissions made on either side and perused the materials available on record.

12.There is no dispute that the appellant establishment is covered under the E.S.I.Act. The order under section 45-A of the E.S.I.Act, dated 03.07.1998 has been passed determining the contribution for the period of March 1992 to September 1995 demanding a sum of Rs.1,64,611/-. The said amount was raised by the Corporation on the ground that the



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contribution for the persons under the name and style of apprentices have not been paid.

13. According to the employer, they are apprentices under the Model Standing Order and they are exempted from the purview of the Act. A perusal of the documents filed on the side of the employer will clearly show that the Model Standing Order has been filed as Exhibit P5. A perusal of the Standing Order will clearly indicate that an apprentices is also considered to be one of the classes of Workmen under Clause 2(f) of the Standing Order.

14. In the Inspection Report submitted by the E.S.I. Inspector on 13.09.1995 and 02.11.1995 will clearly indicate that the apprentices were not treated differently from that of the regular permanent workmen. The Apprentices have been paid salary based upon the number of days/ hours they have worked and not on monthly stipend basis. The report further reveals that the apprentices are engaged in all shifts including the Sunday. The Festival advance and cash leave can also be availed by such apprentices. The report further points out that around 200 persons are engaged in the name and style of apprentices who are primarily utilised for running a mill by employing them in all shifts for production purpose.



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The said facts are revealed in the order passed by the authority under Section 45-A of the Act. When E.S.I.O.P.No.30 of 1998 was filed, the employer has not disputed the said factual findings in the inspection report which are recorded in the order under Section 45-A of the Act.

15.Considering the enormous numbers of so called apprentices employed, this Court is of the view that they are not apprentices, but regular workmen engaged under the guise of apprentices in order to avoid payment of contribution under the E.S.I.Act. The Labour Officer of the appellant establishment is the appropriate person to disclose about the total number of employees and number of apprentices among them. However, in his deposition, he has categorically admitted that he is not aware of the total number of employees and the apprentices among them. The employer has not produced any apprentices agreement or a contract to prove that these employees were engaged as apprentices. It has also been recorded in Section 45-A order that the trainee officer was not available on days of inspection which would disclose that no training programmes were being conducted in the appellant establishment.

16.In view of the above said submissions, this Court could easily arrive at a finding that many employees have been employed in the



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appellant establishment under the name and style of apprentices in order to carry out the production activities in all shifts. These so called apprentices are being treated almost on par with the employees and the management is not able to place on record how these apprentices were treated in different manner than that of the permanent workmen. Therefore, the findings of the E.S.I.Corporaiton as well as the E.S.I.Court that these apprentices are none other than the regular workmen is based upon records and factual findings.

17.The appellant employer has not made out any case for interference in the present appeal and the appeal lacks merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
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1. The Presiding Officer
Labour Court, Madurai

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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