



C.M.A(MD).No.731 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.03.2023

PRONOUNCED ON : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.731 of 2017
and CMP(MD).No.7955 of 2017

The Director
Employee's State Insurance Corporation
Sub Regional Office
4th Main Road, K.K.Nagar
Madurai

... Appellant

vs.

M/s.Varadhalakshmi Mills Ltd.,
Rajagambeeram, Manamadurai
Sivagangai District

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 82(2) of the Employee's State Insurance Act, 1948, to set aside the order of E.S.I.Court, Madurai in E.S.I.O.P.No.40 of 2004 dated 19.03.2015 and allow the appeal.

For Appellant : Mr.N.Dilipkumar

For Respondent : Mr.Jerin Mathew
For M/s.E.Ilango



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JUDGMENT

The above appeal has been filed by the E.S.I Corporation challenging the order of the Labour Court wherein the order passed by the E.S.I.Corporation under Section 45-A of the Act was set aside.

2.Factual Matrix:

(i).The respondent mill is a Public Limited Company and they are manufacturing sale of cotton, polyester yarn. Admittedly, the said mill is covered under E.S.I.Act. On 22.01.2004, an inspection was conducted by the authorities under E.S.I Act and an inspection report was prepared indicating that for the period covering April 1998 to March 2003 contribution has not been paid towards apprentice stipend. Based upon the said inspection report, a show cause notice under Form-C18 was issued to the employer on 17.02.2004 calling upon him to show cause why Adhoc amount determined in the said notice should not be confirmed. The employer had submitted his explanation on 10.04.2004 contending that as per inspection report and Form-C18 notice, the omitted wages relate to stipend paid to the apprentices. All the

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apprentices were appointed as per certified Standing Order and they are exempted from the purview of E.S.I.Act.

(ii).An order under Section 45-A of the E.S.I.Act was passed on 20.07.2004 to the effect that only a partial portion of the Standing Order were placed before the authorities. In the said order, it was also pointed out that as per the Standing Order, the apprentices have also been classified as 'workmen'. He had further pointed out that the employer has not been produced any records such wage register and acquittance rolls in support of their stand that what is paid is stipend only. The impugned order further pointed out that the employer had failed to produce the details of the apprentices like name, age, qualification, nature of work method of appointments, period of training, faculty particulars, training infrastructure etc., The order further pointed out that it is the primary responsibility of the employer to cover and register the workers engaged in the name of apprentices under E.S.I.Act. The order further pointed out that the apprentice in question are also coverable and the payment made towards them are also liable for E.S.I.contribution. Based upon the said findings, the contribution was determined at Rs.6,23,365/-. This order



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was challenged by the employer before the E.S.I.Court in E.S.I.O.P No. 40 of 2004.

(iii).The E.S.I.Court after considering the oral and documentary evidence arrived at a finding that without any pleading whatsoever, the E.S.I.Corporation has taken a stand that those employed under the name and style of apprentices are not apprentices, but they are regular employees. The E.S.I.Court further found that Exhibit P4-inspection report and Exhibit P5-Form-C18 notice referred only to the apprentices stipend as omitted wages.

(iv).The E.S.I.Court further found, in the order under Section 45-A of the Act, the officials of the Corporation have not dealt with the defence that was raised by the employer relating to exemption of apprentices. The E.S.I.Court further found that the entire certified Standing Orders have been placed before the Court as Exhibit P3 which permits the employer to appoint apprentices. The E.S.I.Court relied upon the judgement of the Hon'ble Supreme Court and arrived at a finding that the apprentices who were appointed under the Apprentice Act or under certified Standing Orders are exempted from the purview of E.S.I.Act.



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Based upon the said findings, the E.S.I.Court was pleased to allow the petition filed by the employer. Challenging the same, the present appeal has been filed by the corporation.

3.Contentions of the learned counsel appearing for the appellant/corporation:

(i).The learned counsel for the appellant/corporation had contended that under the guise of employing apprentices, regular employees were utilized for extracting the work. He had further contended that though it is styled as stipend, actually those employees were receiving wages from the employer. He had further contended that a group of employees have been designated as apprentices only for the purpose of evading payment of contribution under E.S.I.Act. But on the other hand, they are regular employees who are receiving wages and liable to be covered under E.S.I.Act.

(ii).The learned counsel for the appellant had further contended that the inspector of E.S.I.Corporation in his inspection report has pointed out that the stipend paid to the apprentices are also covered and have also to be treated as omitted wages only in view of the fact that they



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are not apprentices, but they are regular workmen. He had further contended that the inspection report and Form C-18 notice will clearly disclose that those persons are only employees and not apprentices and hence, any payment made to them under the name and style of stipend should be treated as wages coverable under E.S.I.Act.

(iii).The learned counsel had further contended that in the order under Section 45-A of the E.S.Act as well as in the counter, the E.S.I.Corporation has specifically pointed out this misconduct on the part of the employer in treating regular employees as apprentices. Therefore, the findings of the E.S.I.Court that there is no pleading on the part of the Corporation that the regular employees are employed in the name and style of apprentices is not correct.

(iv).He had further contended that when an Adhoc notice is issued under Form C-18, it is for the employer to produce all his records to establish and prove that those employees are only apprentices and not regular workmen. Despite giving several opportunities, the employer has not come forward to produce those documents. Therefore, as empowered under Section 45-A of the Act, the Corporation has passed an order



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treating it as omitted wages. The learned counsel had further contended that the entire records are always available only with the management and therefore, after issuance of show cause notice, it is the duty of the employer to reply to the Adhoc notice namely Form-C18 and place all the materials on record. When the burden is upon the employer, the E.S.I.Court had erroneously shifted the burden upon the E.S.I.Corporation to prove that the apprentices are regular employees.

(v).The learned counsel for the appellant had further contended that the evidence of RW1 who is the official of the E.S.I.Corporation has not been properly appreciated by the E.S.I.Court. Hence, he prayed for allowing the appeal and to suspend the order under Section 45-A of the E.S.I.Act.

4.The learned counsel for the respondent had contended as follows:

(i).The learned counsel for the respondent had contended that the inspection was conducted on 22.01.2004 and the inspection report clearly indicates that the omitted wages are the stipend paid to the apprentices. Based upon the said report, an Adhoc notice under Form-C18 was issued on 17.02.2004. The said notice also indicated that



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the contribution is demanded towards stipend paid to the apprentices. An explanation was offered by the management under Exhibit P6 on 10.04.2004 to the effect that they are apprentices and they are not coming under the purview of E.S.I.Act. Without considering the explanation and without properly appreciating the inspection report and Form-C18 notice, Section 45-A order has been passed.

(ii).According to the learned counsel for the respondent, a perusal of Exhibit P4 inspection report would clearly indicate that all the records that were requested by the officials have been produced and there was no refusal on the part of the employer to produce any document. The employer had given his explanation, however no further documents were called for by the E.S.I.Corporation. But the Corporation proceeded to pass an order under Section 45-A of the E.S.I.Act as if the employer has not produced the document to establish that whatever paid to the apprentice is only a stipend.

(iii).The learned counsel for the respondent had further contended that the inspection report or Form C-18 notice or Section 45-A of the E.S.I.Act order never divulged that the regular employees are appointed



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under the guise of apprentice. In fact, in the counter filed before the E.S.I.Court also, there is no allegation that the regular employees are being appointed as apprentice. Therefore, only during the arguments, the Corporation had raised the said plea and therefore, the E.S.I.Court was right in rejecting the said argument on the ground that there was no pleadings.

(iv).The learned counsel had further contended that the entire certified Standing Orders were produced before the E.S.I.Court as Exhibit P3. After perusal of the certified Standing Order, the Court arrived at a finding that the management is entitled to appoint apprentices under the said Standing Order. Therefore, it is clear that the employees appointed as per certified Standing Order are exempted from the purview of Section 2(9) of the E.S.I.Act. When the apprentices are appointed under the certified Standing Orders are not employees as defined under Section 2(9) of the Act, the question of payment of contribution towards stipend paid to them does not arise. Therefore, he prayed for dismissal of the appeal.



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

6.There is no dispute that the respondent mill is covered under E.S.I.Act. The two issues that arises for consideration is that;

(i).Whether the apprentices appointed as per certified Standing Order of the management, could be considered to be employees and whether the stipend paid to them would attract contribution under E.S.I.Act or not?

(ii).Whether the regular employees are appointed under the guise of apprentice by the management to avoid payment of contribution under E.S.I.Act?

7.A perusal of Section 2(9) of the E.S.I.Act clearly discloses that who were appointed as an apprentice either under the Apprentice Act or under the certified Standing Order of the management are exempted from the definition of employee. In the present case, the management has marked Exhibit P3 which is a copy of the Standing Order of the mill. A perusal of Exhibit P3 discloses that the mill is entitled to appoint apprentices under the said Standing Order. The employers had further



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produced Exhibit P2-Apprentice Application in Form 2 from its apprentices. A perusal of the said applications will also disclose that those persons have been appointed as apprentices subject to various conditions in Form-I. Therefore, it is clear that the management is empowered to appoint apprentices under certified Standing Order and they have also appointed them after obtaining an application from the respective candidates. Hence, it is clear that they are apprentices appointed as per certified Standing Order and that does not fall within the definition of an employee. In view of Section 2(9) of the Act, any stipend paid to them would not attract the contribution under E.S.I.Act.

8.It is the contention of the Corporation that the regular employees are being appointed under the guise of apprentice and therefore, the stipend paid to them should be treated as wages and the said stipend also would attract the contribution under E.S.I.Act. On 22.01.2004, an inspection has been conducted by the officials of the E.S.I.Corporation and the report has been marked as Exhibit P4. A perusal of Exhibit P4 would clearly indicate that the inspector has verified the attendance register, wage register, challan, RCS and other ledgers. He had also



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recorded that all the records that were called for have been produced and there was no refusal or obstruction on the part of the employer in producing the records or registers. After going through all the records, the inspector has recorded the omitted wages are the stipend paid to the apprentices. Based upon the inspection report, an Adhoc -Form C18 notice was issued on 17.02.2004. The said Form-C18, had demanded a sum of Rs.6,23,365/- pointing it as contribution towards stipend paid to the apprentices. On 10.04.2004, an explanation has been submitted by the management to E.S.I Corporation which is marked as Exhibit P6 specifically pointing out that the apprentices have been appointed only as per the certified Standing Order and therefore, they would not fall within the definition of Section 2(9) of the Act. Therefore, the apprentice cannot be considered to be an employee under Section 2(9) of E.S.I.Act or stipend paid to them to be treated as wages under Section 2(22) of the Act. An order under Section 45-A of the E.S.I Act has been passed by the authorities on 20.07.2004 which is marked as Exhibit P7. A perusal of the order indicates the following aspects:



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(a) Only a partial portion of the Standing Orders have been produced and therefore, the same cannot be relied upon by the Corporation.

(b). In the said Standing Orders, the apprentices have also been classified as workmen and therefore, they fall within the definition of Section 2(9) of the E.S.I. Act.

(c). The employer had not produced any records such as wage register and acquittance roll in respect of their stand.

(d). The employer has not produced any details about the apprentice and their nature of work, period of training or training infrastructure etc.

(e). The apprentice in question are coverable and the payment made to them is liable under E.S.I. Corporation.

9. A perusal of the order under Section 45-A of the E.S.I. Act will clearly indicate that there was no allegation on the part of the Corporation that the regular employees are being employed under the name and style of apprentice or the wages paid to them have been wrongly classified as stipend in order to evade the payment of



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contribution. After explanation was submitted by the employers on 10.04.2004, no further documents were called for from the employer. In fact, the inspection report itself points out that all the records were placed before the Inspector and there was no obstruction on the part of the employer in perusal of the said records by the inspector.

10.A perusal of the counter filed by the E.S.I. Corporation before the E.S.I. Court will disclose that there is no pleading to the effect that the regular employees are employed under the guise of apprentice. Therefore, there is no pleading in the written statement filed before the E.S.I. Court to the effect that the regular employees are appointed under the guise of apprentice to avoid payment to E.S.I. Corporation. For the first time, such a contention has been raised only in Form-D5 notice which was issued after the order under Section 45-A of the Act. The said contention has also been raised before the E.S.I. Court during arguments. The E.S.I. Court had rejected the said contention of the E.S.I. Corporation on the ground that they are no pleadings to the said effect. However, the learned counsel appearing for the appellant had contended that the law of pleading as contemplated under the Code of Civil Procedure is not



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strictly applicable to the proceedings before the E.S.I.Court.

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11.The Tamil Nadu Employees Insurance Courts Rules 1951 governs the procedure to be followed by the E.S.I.Court. Rule 13(1) provides for filing of application and Rule 13(2) points out that such an application shall be verified in the same manner as a pleading in the civil Court. Rule 22(1) provides for filing of a written statement. Section 22(2) points out that such a written statement shall be verified in the same manner as a pleading in a civil Court. Rule 22(3) points out that the every written statement shall be specifically deny each allegation of fact alleged by the applicant. It further points out that the written statement should contain all the matters which show that the application is not maintainable and all such grounds of defence as, if not raised, would be likely to take applicant by surprise or would raise issues of fact not arising out of the application. Rule 47 points out that in matters relating to the procedures or admission of evidence in which no specific provisions should be made in the said rules, the provisions of the Code of Civil Procedure including the rules made thereunder and the Indian Evidence Act shall, so far as may be, apply to proceedings under the Act.



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Therefore, it is clear that the statutory rules connected with the pleading of the parties should be as per the provisions of C.P.C and the Indian Evidence Act. Unless a particular fact is denied in the written statement, the same cannot be taken into consideration by the Court even if the evidence is produced to the said effect. Therefore, the contention of the learned counsel appearing for the appellant that the strict rules of pleading of Civil Procedure Code are not applicable to the proceedings under E.S.I Act before the E.S.I.Court is not legally sustainable.

12.In the counter filed by the E.S.I.Corporation, no where the Corporation has contended that the regular employees are being employed under the name and style of Apprentice and the wages paid to the regular employees are branded as stipend to avoid contribution. Therefore, the Tribunal was right in rejecting the said contention which was raised at the time of argument.

13.There is no allegation in the written statement that the documents were called for either by the inspector or by the corporation and the same were not produced by the employer. Therefore, one of the



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grounds mentioned in the order passed under Section 45-A of the Act that the employer has not produced any records is also not legally sustainable.

14. When the inspection report under Exhibit P4 and the Adhoc notice under Form C18 clearly point out that the contribution is demanded as omitted wages for the Apprentice stipend, it cannot be later contended by the corporation that though they are styled as apprentice, in the actuality they are employees.

15. Section 2(9) of the E.S.I. Act defines an employee which clearly exempts any apprentice appointed either under the Apprentice Act or under the certified Standing Order. In the present case, the employer had produced Exhibit P2 application of the apprentices and Exhibit P3 certified Standing Order. Therefore, it is clear that the persons for whom contribution were demanded by the corporation, were apprentices under the certified Standing Order of the management and therefore, the stipend paid to them does not attract contribution under the E.S.I. Act.

16. The E.S.I. Court after careful consideration of the oral and documentary evidence has allowed the petition. All the substantial



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questions of law raised by the appellant are answered as against the appellant. This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The E.S.I Court (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 order made in
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