IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Ins.APP.No. 1 of 2013

AGAINST THE JUDGMENT IN IC 15/2008 of EMPLOYEES INSURANCE COURT, KOLLAM

APPELLANTS/RESPONDENTS 1 AND 2:
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1. EMPLOYEES ATATE INSURANCE CORPORATION
   PANCHDEEP BHAVAN, NORTH SWARAJ ROUND, THRISSUR.

2. THE ASSISTANT DIRECTOR
   EMPLOYEES STATE INSURANCE CORPORATION
   KURUMPELIL AVENUE, POLAYATHODU, KOLLAM-691021.

   BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENT(S)/APPLICANT AND ADDL.RESPONDENTS 3 TO 6:
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1. THE MATHRUBHUMI PRINTING & PUBLISHING CO. LTD
   M.J.KRISHNAMOHAN MEMORIAL BUILDING
   K.P.KESAVA MENON ROAD, KOZHIKODE-673001.

2. SECRETARY
   THE MATHRUBHUMI TRIVANDRUM EDITION EMPLOYEES
   CO-OPERATIVE SOCIETY LTD.
   TRIVANDRUM-695035.

3. S.MURALEEDHARAN NAIR
   C/O.THE MATHRUBHUMI TRIVANDRUM EDITION EMPLOYEES
   CO-OPERATIVE SOCIETY LTD.
   TRIVANDRUM-695035.

4. M.SANDEEP, C/O.THE MATHRUBHUMI TRIVANDRUM
   EDITION EMPLOYEES CO-OPERATIVE SOCIETY LTD.
   TRIVANDRUM-695035.

5. G.VIJAYAN
   C/O.THE MATHRUBHUMI TRIVANDRUM EDITION EMPLOYEES
   CO-OPERATIVE SOCIETY LTD.
   TRIVANDRUM-695035.

   BY ADVS. SRI.U.K.RAMAKRISHNAN (SR.)
   SRI.U.K.DEVIDAS
   SRI.PRINSUN PHILIP
   SMT.DEVI.C.HARIDAS

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

P.B.SURESH KUMAR, J.

Ins.Appeal No.1 of 2013

Dated this the 10th day of February, 2015.

J U D G M E N T

The decision of the Employees Insurance Court, Kollam in I.C.No.15 of 2008 is under challenge in this appeal. The Employees' State Insurance Corporation, hereinafter referred to as "the Corporation", for short, and its Assistant Director are the appellants.

2. The first respondent is an establishment covered under the Employees' State Insurance Act, hereinafter referred to as 'the Act', for short. On 14.2.2008, an Inspector attached to the Corporation visited the Thiruvanthapuram unit of the first respondent and reported to the Corporation that three employees who were found working in the canteen of the establishment from April 2003 are not registered under the Act. On the basis of the report of the Inspector, the Corporation issued a letter dated 30.4.2008, directing the first respondent to register the said employees. The said direction of the Corporation was challenged by the first respondent before the Insurance Court.

3. According to the first respondent, they are engaging only less than 200 employees in the establishment and therefore, not obliged by any statutory provision to run a canteen for its employees. As such, they are arranging food to their employees based on a contract entered into by them with the Employees' Cooperative Society. According to the first respondent, the Employees' Cooperative Society is preparing food in a portion of the premises leased out by them by engaging the employees referred to by the Inspector. It is their case that the first respondent has no control or supervision over the preparation of the food carried on by the said employees and therefore, they cannot be treated as the employees of the establishment.

4. The Corporation contested the case contending interalia that even though the first respondent is not obliged to provide a canteen, the work carried on by the employees of the co-operative society is a work incidental to the work of the first respondent and therefore, they are liable to be treated as the employees of the first respondent.

5. The Insurance Court found that the Employees'

Cooperative Society of the first respondent is preparing and supplying food to the employees by engaging the workers referred to by the Inspector based on a work order issued by the establishment. The Insurance Court also found that the preparation of the food is carried on at a portion of the premises leased out by the first respondent to the society. On the basis of the said findings, the Insurance Court came to the conclusion that in so far as the first respondent is not obliged to run a canteen for the benefits of its employees, the preparation of food by the cooperative society of the employees cannot be treated as a work which is incidental to the work of the establishment. Accordingly, the Insurance Court allowed the application filed by the first respondent holding that the wokers referred to by the Inspector are not liable to be registered. The Corporation is aggrieved by the said decision of the Insurance Court.

6. The short issue that falls for consideration is whether the three employees who were found working in the canteen of the establishment by the Inspector are liable to be treated as the employees of the establishment. The fact that

the aforesaid employees were preparing food for the employees in the premises of the establishment is not disputed. Likewise, the facts that they were engaged by the Cooperative Society of the employees and that the food was being prepared by them in a portion of the premises of the establishment which was leased out to the Cooperative Society of the employees are also not seriously disputed. The question therefore, is whether such employees are liable to be treated as employees of the establishment. Going by the definition of "employee" as contained in Section 2(9) of the Act, only persons employed in or in connection with the work of the establishment would come within the definition of the "employee". Those who are employed in the premises of the establishment under the supervision of the employer for works which are ordinarily part of the work of the establishment or preliminary to the work carried on or incidental to the purpose of the establishment would also come under the definition of "employee". In the instant case, the Insurance Court found that the employer was not bound by any statutory provision to run a canteen in the premises of the establishment for its employees. When the employer is not bound by any statutory provision to run a canteen in the premises for its employees, the activity of preparation and supply of food by the society of employees by engaging workers of their choice, in a portion of the premises of the establishment leased out to them cannot be treated as an activity carried on in or in connection with the work of the establishment. Such activity cannot also be treated as an activity which is part of the activity of the establishment or preliminary or incidential to the work carried on in the establishment. The finding of the Insurance Court that the three employees found working in a portion of the premises of the establishment leased out to the Employees Cooperative Society, cannot be treated as employees of the establishment is therefore, in order.

There is, therefore, no merit in the appeal and the same is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR,
JUDGE

Kvs

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