IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Ins.APP.No. 62 of 2011 ( )

AGAINST THE JUDGMENT IN IC 9/2005 of E.I.COURT, KOLLAM, DATED 23-11-2010

APPELLANTS/1ST & 2ND OPPOSITE PARTIES:-

1. THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND, THRISSUR-20.

2. RECOVERY OFFICER,
EMPLOYEES STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND, THRISSUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENTS/APPLICANT & 3RD OPPOSITE PARTY:-

1. MANAGING DIRECTOR,
KERALA STATE BACKWARD CLASSES DEVELOPMENT
CORPORATION LTD., T.C.15/25, PANKAJ
VELLAYAMBALAM, THIRUVANANTHAPURAM-695001.

2. GENERAL SECRETARY, BACKWARD CLASSES
DEVELOPMENT CORPORATION EMPLOYEES ASSOCIATION
OFFICE OF THE BCDE, PATTOOR, VANCHIYOOR P.O.
THIRUVANANTHAPURAM-695102.

R-1 BY ADV. SRI.GOPAKUMAR R.THALIYAL
R-1 BY ADV. SRI.M.S.VIJAYACHANDRAN BABU
R1,R2 BY ADV. SRI.JAYAPRADEEP. V, SC, KSBCDC

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

Ins.Appeal No.62 of 2011

Dated this the 3rd day of March, 2015.

J U D G M E N T

The decision of the Employees Insurance Court, Kollam in I.C.No.9 of 2005 is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation, hereinafter referred to as 'the Corporation', for short, and the Recovery Officer of the Corporation are the appellants.

2. An Inspector attached to the Corporation on a survey found that the Kerala State Backward Classes Development Corporation Limited, hereinafter referred to as 'the establishment', for short, and its branches are liable to be covered under the Employees' State Insurance Act, hereinafter referred to as 'the Act', for short. The Corporation thereupon required the establishment to comply with the provisions of the Act. The decision of the Corporation has been challenged by the establishment before the Insurance Court in the proceedings referred to above on the ground that the establishment being a Government of Kerala undertaking, is exempted from the purview

of the Act.

3. The Corporation contested the proceedings contending mainly that the establishment being an establishment to which the provisions of the Act are extended in accordance with Section 1(5) of the Act, the same is liable to be covered under the Act.

4. The Insurance Court found that the establishment is not liable to be covered under the Act. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

5. Heard the learned counsel for the appellants and the learned counsel for the first respondent.

6. Section 1(4) of the Act dealing with the application of the provisions of the Act in relation to factories and establishments belonging to or under the control of the Government, reads thus:

> "1. Short title, extent, commencement and application
>
> (4) It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.
>
> Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act."

It is evident from the extracted provision that an establishment belonging to or under the control of the Government is liable to be covered under the Act if the employees of such establishments are not otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act.

7. There is no dispute to the fact that the establishment is one owned and controlled by the Government of Kerala. As such, the issue is whether the employees of the establishment are in receipt of benefits substantially similar or superior to the benefits provided for under the Act. The said issue is not seen considered by the Insurance Court. Instead, merely for the reason that the staff of the establishment are governed by some of the Rules applicable to Government establishments, the Insurance Court came to the conclusion that the establishment is exempted from the purview of the Act. The approach of the Insurance Court is incorrect. The Insurance Court should have considered the issue whether the employees of the establishment are in receipt of the benefits substantially similar or superior to the benefits provided for under the Act, with reference to the benefits available to them as per the various rules referred to in

the order. In so far as the said exercise has not been done, the impugned order is liable to be set aside.

In the result, the appeal is allowed, the impugned order is set aside and the matter is remitted to the Insurance Court for fresh disposal, after affording to the establishment an opportunity to adduce evidence.

Sd/-
P.B.SURESH KUMAR,
JUDGE

Kvs

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PA TO JUDGE.