

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.510 of 1981 (O&M)
Date of Decision.18.03.2015

M/s Sushil Flour and Dal Oil Mills

....Appellant

Versus

Employees' State Insurance Corporation

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Ms. Ekta Thakur, Advocate for the appellant.
Mr. B.S. Bhatia, Advocate for the respondent.

NAVITA SINGH, J.

1. The instant appeal is filed against the order dated 31.7.1981 passed by the Employees' Insurance Court, Chandigarh, whereby application under Section 75 of the Employees' State Insurance Act (Act for short), was dismissed.

2. The case of the appellant was that it was not covered under the Act because as per the inspection report Ex.R1 the persons, who were paid a sum of Rs.6500/-, were casual workers/labours and had been paid from the Mazdoori Khata. Though those persons were found working at the time of inspection, they were not the employees of the appellant as such. They were shown as Palledars in the payment record and they were engaged temporarily for loading and unloading the goods.

3. Despite holding that the persons found working at the relevant time were casual labours engaged only for the purpose of loading and unloading of goods, the court held that the payment made to them would be covered under 'wages' as defined under the Act. There was no evidence that the persons working as temporary and casual workers with the appellant were working continuously for a long period and it was a sham that they were actually not the 'employees' of the appellant. Nothing was shown that the appellant was evading

to pay its contribution qua those employees. If it was so done, it was because that they were casual labour and not really employed by the appellant. The labourers so engaged keep changing from time to time. Simply because they were paid by the appellant, they would not be covered under the definition of employee. Even if they were engaged for a fix period during the day or merely for loading and unloading temporarily, payment had to be made to them by the appellant. In any case, as they were otherwise paid workers, the criteria to apply the Act would be entirely different.

4. Counsel for the appellant relied on Employees' State Insurance Corporation Vs. Premier Clay Products 1995 (Sup3) SCC 567 and Employees' State Insurance Corporation Vs. Surya Printmac Industries 1999 (3) SCT 271 where the Supreme Court held that casual workmen, who worked as coolies or were engaged for loading and unloading of goods, could not be said to be the employees and, therefore, the act would not be applicable to the employer in such cases. It was held in Employees' State Insurance Corporation Vs. Surya Printmac Industries (supra) that even such workers on contract basis would not be covered.

5. Counsel for the respondent could not show anything to the contrary and nothing was proved by the respondent before the court below that the persons engaged as labourers temporarily were the employees of the appellant.

6. The appeal is allowed and so is the petition filed by the appellant under Section 75 of the Act holding that the demand raised by the respondent was illegal.

(NAVITA SINGH)
JUDGE

18.03.2015
Ishwar

Whether to be referred to reporter: Yes