IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1581 of 1998 (O&M)
Date of Decision:04.02.2015

Kasmiri Lal

….Appellant

Versus

Regional Director, Employees State Insurance Corporation and another

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Ashish Gupta, Advocate for
Mr. R.K. Gupta, Advocate for the appellant.

Mr. G.S. Bhatia, Advocate for the respondents.

NAVITA SINGH, J.

1. In the last order, it was wrongly mentioned that counsel for the appellant was seeking time to argue on the point regarding number of persons employed, whereas the request was made by counsel for the respondents. The order be read accordingly. Counsel for the respondents has brought reported cases on the subject.

2. Heard.

3. The appeal was filed against the order passed by Civil Judge (Senior Division), Patiala, exercising the power of Employees Insurance Court, whereby application under Section 75 of the Employees State Insurance Act (Act for short) filed by the appellant was rejected vide judgment dated 7.2.1998.

4. It was rightly pointed out by counsel for the appellant that the court passing the order, laid undue stress on the inspection made by the Labour Inspector and his report Ex.R1 holding that it was binding on the appellant so far as number of employees mentioned therein was concerned. The court below did

not give any importance to the fact that at the time of inspection on 1.11.1991, more than ten persons were found working in the business premises of the appellant due to the festival of Diwali and the number of permanent employees was only three while the other workers were engaged temporarily for preparing sweets for sale on Diwali. The business premises was also taken to be a factory with manufacturing process only because bottle cooler, one tullu-pump and blower were found there. Reference was made to the report Ex.R1, on which both the parties rely heavily, where it was categorically mentioned by the Inspector concerned that wages were being paid according to the minimum rate fixed by the State Government and further that out of twelve employees found working at that point of time, only three were permanent while rest were temporary employees due to rush on account of Diwali festival. Counsel for the appellant argued that the Inspector clarified in the report itself that nine persons had been engaged temporarily and, therefore, the appellant, being a small business man, had engaged only three permanent workers for preparing sweets.

5. Learned counsel for the respondents, on the other hand, argued that even temporary employees were engaged for a fixed period, appellant would be covered by the Act and preparation of sweets being a manufacturing process, it could be said that the appellant was running a factory. This argument will not hold any force because the question is not only whether manufacturing process was being carried out by the appellant but also whether he had employed more than ten persons for working with the aid of power or twenty persons working without the aid of powers. Merely because some blower for furnace was found working and there was a bottle cooler, it would not mean that the appellant was running a factory with the requisite number of employees so as to be covered by the Act. The report Ex.R1 is self contained so far as the number of employees is concerned.

6. Counsel for the respondents relied upon Bombay Anand Bhavan Restaurant Vs. The Deputy Director, ESI Corporation and another, JT 2009 (11) SC 563, which would not be applicable because in that case the number of employees was more than ten and power was being used. There was nothing to show that any of the employees was engaged for fixed small period, rather in that case, persons were proved to be in employment for 12 months preceding the relevant period. Reliance was also placed on Regional Director, Employees' State Insurance Corporation, Madras Vs. South India Flour Mills (P) Ltd., AIR 1986 Supreme Court 1686 in which casual employees were taken for construction work of additional buildings for extension of factories and in such event, it was held that those temporary/casual employees would be covered under the Act and so would be the establishment. It is understandable to all, that constructing additional buildings for extension of factories was a long process and it is not that the construction would have been completed within a few days. In the instant case, a small sweet mart employed certain persons only for preparing extra sweets during Diwali festival and that work could not go on for more than a fortnight. Sweets are perishable items and the manufacturing process for those covers only a limited small period.

7. Counsel for the respondents lastly argued that the demand was for a small amount of Rs.1172/-, which was also paid by the appellant and, therefore, at this stage, there was no need to set aside the impugned order, as the appellant was not going to gain much out of that. This argument is again devoid of merit because the question is not of the quantity i.e. the amount demanded by the respondents but of law as to whether the demand was or was not legal. If the demand was illegal, however small the amount may be, the appellant has a right to get a lawful order in his favour.

8. The appeal is allowed as a consequence thereof the impugned order is reversed, allowing the application filed by the appellant under Section 75 of the Act.

(NAVITA SINGH)
JUDGE

04.02.2015
Ishwar

Whether to be referred to reporter: Yes