

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.6928 of 2011

Date of Decision: April 23, 2015

Punjab State Power Corporation Limited, Patiala

...Petitioner

Versus

Employees State Insurance Corporation, Chandigarh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Vishal Chaudhary, Advocate,
for the petitioner.

Mr.Adarsh Malik, Advocate,
for respondent No.1.

Mr.Sandeep Khunger, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

Punjab State Power Corporation Limited (for short “PSPCL”) has approached this Court for quashing of the orders (Annexures P-4, P-5 and P-6) under Section 45-A of the Employee State Insurance Act, 1948 (for brevity “the Act”), orders issued under Section 85-B of the Act (Annexures P-7 and P-8) and as well as for quashing the contribution for the period 6/79 to 30.11.1981 and 1.9.19986 to 31.10.1986 as shown in Annexure P-3) with a further prayer for issuance of a writ of mandamus directing respondent No.1 to provide the details as to how the contribution

for the period as shown in Annexure P-7 has been worked out.

The PSPCL has invoked the jurisdiction of this Court on the premise that prior to 1.4.1995, the Municipal Corporation, Amritsar had been providing electricity to Amritsar. Thereafter, vide agreement (Annexure P-1), the entire power vested with the Punjab State Electricity Board and since the Punjab State Electricity Board has been dissolved, the PSPCL has assumed the role.

It has been contended by Mr.Vishal Chaudhary, learned counsel for the petitioner, that the PSPCL was flabbergasted by receiving the notice from respondent No.1 claiming contribution along with the demand of damages and interest.

It is a matter of record that the entire alleged demand has been adjusted by the Corporation from the account of the petitioner-Corporation.

Mr.Adarsh Malik, learned counsel appearing for Employees State Insurance Corporation-respondent No.1 submits that the present writ petition is not maintainable as the petitioner-corporation has an alternative remedy by approaching the ESI Court invoking the powers under Section 75 (1)(g) and (2) of the Employees State Insurance Act, 1948 and there is no limitation for claiming the relief of contribution alleged to have been recovered by the ESI.

For the sake of brevity, provisions of Sections 75(1)(g) and (2) of the Act are extracted herein below:-

75. Matters to be decided by the Employees' Insurance Court.—(1) If any question or dispute arises as to—

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's

contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

1[(ee) any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefits, or]

2 [* * *]

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, 3 [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act], such question or dispute 1[subject to the provisions of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) 2[Subject to the provisions of sub-section (2A), the following claims] shall be decided by the Employees' Insurance Court, namely :—

(a) claim for the recovery of contribution from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

3[* * *]

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or

amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) If any claim for the recovery of any benefit admissible under this Act.

4[(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.]

5[(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation :

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.]

(3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by [a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court].

On perusal of the aforementioned provisions, it leaves no

manner of doubt that the petitioner-Corporation has an alternative remedy for recovering the contribution/damages and interest, which according to the petitioner, was not liable to be paid.

In case the petitioner-Corporation approaches the ESI Court, the ESI Court shall make an endeavor to decide the claim of the petitioner-Corporation as expeditiously as possible, preferably within a period of 1½ years. The parties shall be at liberty to prove their case by leading evidence.

With the aforementioned observations, the writ petition stands disposed of.

April 23, 2015
ramesh

(AMIT RAWAL)
JUDGE