

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.2661 of 2012 (O&M)

Date of decision: 23.04.2015

Employees State Insurance Corporation and others

..... Appellants

versus

Parminder Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.B.S.Bhatia, Advocate for the appellants
Mr.Rajan Bansal, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Employees State Insurance Corporation and others have impugned order dated 20.12.2011, passed by the learned Civil Judge (Senior Division), Bathinda, vide which, the petition filed by the respondent Parminder Singh under Sections 75 and 77 of the Employees State Insurance Act, 1948 (for short, 'the ESI Act'), was allowed and it was held that the petitioner firm(respondent herein) is not covered under the provisions of the ESI Act.

Briefly stated, certain demands were raised by ESI Corporation for the certain period on the ground that the firm of the petitioner (respondent herein) is covered under the ESI Act. The assertions were denied by the petitioner (respondent herein).

Undisputedly, in this case, 8 regular employees were

employed by the petitioner (respondent herein) and 3 casual employees were found working at the time of inspection. The law point arising for consideration is as to whether 3 employees, who were employed for 3 days, are to be treated as casual employees for the purpose of computing the number of employees to be above 10 under the ESI Act.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, in this case, the proved facts are that 8 regular employees were employed by the respondent firm and that as per record, Jagjit Singh and two labourers were employed for 3 days for carrying out some repair of the machinery. The lower Court held that they were engaged casually and cannot be treated as employees as per provisions of Section 2(9) of the ESI Act.

Learned counsel for the appellant has relied upon the authority in the case of Regional Director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd., AIR 1986 Supreme Court 1686, wherein the workers employed for the construction of the additional building of the factory were treated as employees as per Section 2(9) of the ESI Act. Reliance has also been placed upon the authorities in the cases of Employees State Insurance Corporation v. Shri Onkar Nath Gupta, Vol. LXXXIV-1982 The Punjab Law Reporter 599 and Employees State Insurance Corporation, Chandigarh v. Oswal Woolen Mills Ltd., Millar Ganj, Ludhiana.

Section 2(9) of the ESI Act provides as under:-

(b) any person so employed whose wages (excluding

remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) :

Provided that an employee whose wages (excluding remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period);

The perusal of the definition shows that the employee must be employed for wages or in connection with the work of the factory. Now, the question would arise whether the nature of engagement for doing some temporary work for 2-3 days is to be treated as employment for wages. I am of the view that it is not so. Employment for wages means that it is some kind of regular employment being done for a considerable period. The engagement for 2-3 days cannot be treated as employment for a considerable period. As such, I do not find any illegality or infirmity in the impugned order.

Consequently, the present appeal is dismissed.

23.04.2015

gk

**(Kuldip Singh)
Judge**