



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.M.A.(MD) No. 314 of 2016

1.The Deputy Director(Insurance),
Employees' State Insurance Corporation,
Sub Regional Office (Tirunelveli),
Municipal Shopping Complex,
Salai Street,
Sindhupoonthurai,
Tirunelveli - 627 001.

2.The Recovery Officer,
Employees' State Insurance Corporation,
Sub Regional Office,
Municipal Shopping Complex,
Salai Street,
Sindhupoonthurai,
Tirunelveli - 627 001.

...Appellants/Respondents

Vs.

Joe Winston

.. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 82(2) of the ESI Act, 1948 to set aside the decree and judgment of the Employees' State Insurance cum Labour Court, Tirunelveli passed in E.S.I. O.P.No.19 of 2014 dated 29.07.2015.

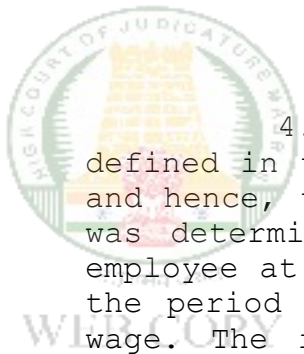
For Appellants : Mr.K.C.Ramalingam
Standing Counsel for ESIC
For Respondent : Mr.M.Sudalaimuthu
for Mr.M.Azeem

J U D G M E N T

This appeal is preferred against the decree and judgment of the Employees' State Insurance-Cum-Labour Court, Tirunelveli, passed in E.S.I.O.P.No.19 of 2014.

2. Heard the learned counsel for appellants and learned counsel for respondent.

3. The first appellant passed order dated 25.09.2012 under Section 45(A) of E.S.I Act 1948 directing the payment of a sum of Rs.1,28,750/- towards arrears of contribution payable by the respondent as the employer. Such order had been preceded by a Show Cause Notice and a personal hearing on 03.05.2005.



4. The appellants have concluded that 'Manufacturing' as defined in the Factories Act was carried out at the respondent's premises and hence, the E.S.I. Act was applicable. The due payment of contribution was determined on adhoc basis assuming the average wage per month per employee at Rs.8250/-, the total number of employees was placed at 12 for the period of 01.06.2010 to January 2012 and at 6.5% on assumed average wage. The respondent challenged the said order of the appellants in E.S.I.O.P.No.19 of 2014.

5. In holding in favour of the respondent, the court below found the fact of operations and work of the respondent being completely in accordance with the provisions of Working Journalists and other Newspaper Employees (Conditions of Services) and Miscellaneous Provisions Act, 1995 was not disputed by the appellants. Considering Ex.P.1 and P.2 License and Declaration Form, the court below held that the name of the newspaper was 'i-Manager journal on Future Engineering', the respondent was the owner and in-charge of both printing and publishing the above journal. As against the contention of the respondent that no printing activities were done by them and the printers were an outside agency, the appellants contended that printing was carried on only in the respondent's premises. The court below noted that the carrying on of such activity in the premises was not mentioned in the visiting note of the officer Ex.R4. Further, the appellants had not pleaded in their counter that the printing activities also were undertaken by the respondent himself. The court below held the respondent to be a Newspaper Establishment, which had been brought under the purview of E.S.I. Act only under Gazette Notification of the State Government dated 02.01.2013. Therefore, the claim for contribution made by the appellants for the period from 01.06.2010 to January 2012, being prior to coverage of the respondent under the E.S.I. Act under notification dated 02.01.2013 was found erroneous. The court below also faulted the appellants determining the wages on adhoc basis informing that the inspection report stated that the employees drew a salary below Rs.10,000/- per month and therefore, it was apparent that the Inspection officer had verified the salary particulars of the employees. Therefore, the Labour Court took the view that the order was not passed on the salary actually drawn by the employees and hence, set aside the order of the appellants also on such score. We find no error in the judgment of the Labour Court, Tirunelveli. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar.

To

The Employees' State Insurance cum Labour Court, Tirunelveli.

+1CC to M/S.Azeem, Advocate, SR.No. 24736

+1CC to M/S.K.C.Ramalingam, Advocate, SR.No. 23826

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