

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.953 of 2008

JUDGMENT:

This appeal is preferred against order dated 06.12.2006 in E.S.I.No.23 of 1999 on the file of Labour Court, Guntur (for short, 'Court below').

2. Appellant herein issued a show-cause notice to respondent No.1 herein claiming a sum of Rs.44,616/- as contribution due for the period from 12/1997 to 3/1999 contending that at the time of inspection, it was found that respondent No.1 herein employed twelve workers i.e., five regular workers and seven daily workers on 02.12.1997 and questioning the said claim, respondent No.1 herein filed case before ESI Court i.e., Labour Court, Guntur and Court below on a consideration of material on record and by following the decision of Karanataka High Court, held that it is incumbent on the part of ESI Inspector to take signatures of those workers found working at the unit/establishment at the time of inspection and as no such procedure has been adopted, allowed the application and notice issued by appellant dated 18.02.1997 demanding contribution was held as illegal and accordingly said order was set aside. Questioning the said order, ESI Corporation preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that the Inspector of ESI found twelve workers working in the establishment and as per the provisions of E.S.I. Act, where there are more than ten employees, the establishment is bound to pay contribution, therefore, a notice was issued to the establishment demanding payment and respondent No.1 herein after receiving the said notice kept quite without taking any objection and when actual demand was made, he approached E.S.I. Court and the Court below without properly appreciating the material declared that the notice dated 18.02.1997 is illegal. He further submitted that the findings of the Court below are not tenable and appellant rightly demanded contribution, therefore, the order of Court below is liable to be set aside.

5. On the other hand, advocate for respondent No.1-employer submitted that respondent No.1 is a small stone crusher with five or six employees and it never employed twelve persons as contended by appellant. He submitted that the Court below has appreciated the evidence of both parties and as respondent No.1 failed to furnish the details of the alleged twelve workers found working on the date of inspection rightly declared that notice issued demanding contribution as illegal and that there are no grounds to interfere with the orders of the Court below.

6. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 06.12.2006 in

*E.S.I.No.23 of 1999 on the file of Labour Court,
Guntur, is legal, proper and correct?*

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POINT :

7. Main contention of appellant is that on 02.12.1997 the factory of respondent No.1 herein was inspected by the E.S.I. Inspector, on which date Inspector found twelve persons working in the factory. According to Inspector of E.S.I., he found five regular workers and seven daily workers working in the factory on 02.12.1997 and the same information was furnished by employer in form No.1. On behalf of employer, PWs.1 and 2 are examined and Exs.P.1 and P.2 are marked and on behalf of appellant, RW.1 is examined and Exs.R.1 to R.3 are marked. Out of the documents marked on behalf of appellant, one is Form C-10, the other is Form C-11 and third one is Form C-18. Though it is contended that employer has submitted Form No.1 admitting employment of twelve workers that was not filed before the Court below and in the inspection report it was mentioned that said form is enclosed. But, as seen from Ex.R.1, which is Form C-10 i.e., Inspection report of E.S.I. Inspector, no such form given by the employer is enclosed to the report. Further, the inspection report is silent as to the details of twelve alleged employees working in the factory. If really the Inspecting Officer noticed twelve persons working in the factory minimum expected from him is to record the

details of those twelve persons though not recorded their statements. The Court below has elaborately discussed the material evidence and by following Division Bench judgment of Karnataka High Court held that such report cannot be accepted for want of necessary details of the alleged twelve employees. The Court below while referring to the judgment of Karnataka High Court pointed out that the Inspector ought to have taken the signatures of those workers found working in the factory and observed that as the same is not done, the inspection report cannot be accepted. I do not find any wrong in the findings of the Court below and when the appellant has not produced sufficient material to show that twelve persons were working in the factory, the self-serving inspection report of RW.1 was rightly discarded.

8. For these reasons, I am of the view that there are no grounds to interfere with the findings recorded by the Court below and appeal is devoid of merits.

9. Therefore, appeal is dismissed.

10. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

22nd August 2016.

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