

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 10117 of 2013
Date of Decision:- 20.12.2016**

Punjab Agricultural University, Ludhiana & anr.Petitioners

vs.

State of Punjab and anotherRespondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Amanpreet Kaur, Advocate,
for the petitioners.

Mr. L.S. Virk, Addl. A.G., Punjab,
for the respondent-State.

Mr. R.S. Bhatia, Advocate,
for respondent No. 2.

DAYA CHAUDHARY, J. (Oral)

The prayer in the present petition is for quashing of impugned order dated 18.5.2012 whereby the exemption given to the Punjab Agricultural University Press Employees from 1.1.2011 to 31.12.2011 was modified to be from 30.6.2011 to 31.12.2011 and also for quashing of letter dated 12.07.2012 whereby order of recovery has been passed.

Briefly, the facts of the case, as made out in the present petition, are that petitioner-University made a representation to the Punjab Government through its Registrar for giving exemption in implementing The Employees' State Insurance Act, 1948 (hereinafter referred to as 'The

ESI Act') to the Punjab Agricultural University Press Employees from 1.1.2011 to 31.12.2011 stating that Press Employees are getting maximum facilities, whereas, according to the 5th Pay Commission, the employees of University are getting ₹ 500/- per month for treatment, ₹ 6000/- to perform the last rites in case of death of an employee and job to one member of the family.

Learned counsel for the petitioners submits that while issuing modified notification dated 18.5.2012 (Annexure P-3), the State Government has not taken into consideration that the University Press is running in loss and no balance sheet and trading accounts are maintained, whereas, the employees of the University are being provided with better facilities in the University hospital. The employees of the University are entitled to exemption as has been granted to regular employees of the University-Press.

Learned counsel also submits that said modified notification dated 18.5.2012 was issued with retrospective effect and as such, the same is arbitrary, mala fide and violative of Articles 14 and 16 of the Constitution of India. Learned counsel also submits that the relief granted to the employees of the petitioner-University cannot be withdrawn or recalled with retrospective effect whereas the said relief has been given to the employees without any misrepresentation or concealment on their part and without granting any opportunity of hearing to the petitioners.

In response to notice of motion, reply has been filed by respondent-State. Learned counsel for the State has raised a preliminary submission that the University has its own hospital for the employees of

PAU Press wherein all facilities are being provided to its employees. An application was also moved by the petitioners for exemption from 1.1.2011 to 31.12.2011 on 27.12.2010 whereas it was a mandatory requirement for every applicant to apply for exemption three months prior to the commencement of the said period. The provisions of Section 87 of the ESI Act were amended with effect from 1.6.2010 vide Gazette Notification of India circulated on 1.6.2010 and period of six months exemption was granted from 30.6.2011 to 31.12.2011 as per application moved by the petitioner-University. Learned counsel for the State submits that approval could only be prospective as per provisions of Section 91-A of ESI Act and as such the modified notification dated 18.5.2012 was issued in accordance with law.

Reply on behalf of respondent No. 2 has also been filed. Learned counsel for respondent No. 2 has also reiterated the arguments raised by learned counsel for the State. He also submits that as per amendment dated 1.6.2010 in Section 91-A of the ESI Act, exemption from the provisions of the Act can be granted from prospective date only and as such, the exemption for the period from 1.1.2011 to 29.6.2011 is violative of amended Section 91-A of ESI Act.

Heard arguments of learned counsel for the parties and have also perused the documents available on the file.

Undisputedly, the petitioner moved an application for exemption from 1.1.2011 to 31.12.2011 on 27.12.2010. It is a mandatory requirement for every applicant to apply exemption before the Department three months prior to the commencement of the period. The provisions of

Section 87 of ESI Act were amended on 1.6.2010 vide Gazette Notification issued/circulated on 1.6.2010. In Section 87 of the Principal Act, the following provisions were inserted at the end which are reproduced as under:-

“Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act:

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application....”

Accordingly, a period of six months was given by giving exemption from 30.6.2011 to 31.12.2011 as per application moved by petitioner-University in view of amended provisions of the ESI Act. Earlier, after issuance of the unamended notification, it was pointed out by respondent No.2 on 25.8.2011 that the approval could only be prospective as per provisions of Section 91-A of the ESI Act. The relevant provision is reproduced as under:-

“Exemptions to be either prospective or retrospective- Any notification granting exemption under section 87, section 88, section 90 or section

91 may be issued so as to take effect prospectively on such date as may be specified therein.”

On the basis of said provisions, the modified notification dated 18.5.2012 was issued. The petitioner applied for exemption from the ESI Act in December, 2010 i.e. only 5 days before the expiry of previous exemption i.e. 1.1.2010 to 31.12.2010 whereas the petitioner should have applied for renewal of exemption three months before the date of expiry of previous exemption and in such circumstances, action could not have been taken. The State Government is competent to amend the previous notification in view of the amendment made on 1.6.2010 in Section 91-A of ESI Act. Moreover, there is no provision to grant exemption from retrospective date under the ESI Act, 1948.

Keeping in view the facts and law position as discussed above and by considering the submissions made by learned counsel for the respondents, there is no merit in the contentions raised by learned counsel for the petitioner and the writ petition being devoid of any merit is hereby dismissed.

December 20, 2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes