

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.617 of 2012

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1. The Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Jawaharlal Nehru Marg, Patna through its Regional Director.

2. The Deputy Director, Regional Office, Employees State Insurance Corporation, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna-800001.

.... Appellants.

Versus

Shri Krishna Goshala, Quila Road, Police Station Chowk, Patna City, through its Secretary Ishwarlal Agarwal, son of Late Jayasi Ram Agarwal.

.... Respondent.

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Appearance :

For the Appellants : Mr. Triloki Nath Maitin, Senior Advocate.
Mr. Sudhir Kumar Bijpuria, Advocate.

For the Respondent/s : Mr. Alok Kumar Sinha, Advocate.
Mr. Indrajeet Bhushan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

Date: 24-08-2018

Heard learned counsel for the appellants and learned counsel for the respondent on this miscellaneous appeal.

2. This appeal has been preferred under Section 82(2) of the Employees State Insurance Act-1948 against the judgment dated 28.06.2012 passed by the Presiding Officer, Labour Court and Employee's State Insurance Court, Patna (hereinafter in short referred to as the 'E.S.I. Court') in E.S.I. Case No.02 of 2011 by



which the learned Labour Court set aside the interim coverage order passed vide letter no.P/42-11666-101/182 dated 15/17.04.2002 and show cause notice dated 29.04.2003 issued by the Deputy Director, Regional Office, Employee State Insurance Corporation, Patna.

3. The factual matrix of the case is that Shri Krishna Goshala (respondent) filed an application under Section 75 (1) (g) of the Employees State Insurance Act, 1948 (hereinafter in short referred to as the 'Act') for setting aside the provisional coverage order, passed vide letter no. P/42-11666-101/182 dated 15/17.04.2002 issued by the Deputy Director, Regional Office, Employee State Insurance Corporation, Patna (appellant no.2 herein) by which Shri Krishna Goshala (hereinafter in short referred to as the 'Goshala') was provisionally covered in purported exercise of power under Section 1 (5) of the Act and to set aside the show cause notice dated 29.04.2003 issued by the opposite party no.2/appellant no.2 and declaring that the Goshala is not covered under any notification issued under the Act.

4. Opposite parties put their appearance in the case and filed a written statement. Both the parties adduced their ocular as well as documentary evidence in buttress of their respective case.

5. After hearing the parties and perusing the record, the learned E.S.I. Court passed the aforesaid judgment as detailed in



earlier paragraph.

6. Being aggrieved and dissatisfied with the impugned judgment the opposite parties have preferred this appeal.

7. It is submitted by learned counsel for the appellants that the learned E.S.I. Court has wrongly shifted the onus to establish that the Goshala has engaged 20 or more employees in his establishment for the purpose of the Act upon the appellants while vide Ext.D respondent has admitted working of 27 employees in its establishment but the learned E.S.I. Court did not consider the aforesaid aspect of the case. The finding of the learned E.S.I. Court that the Goshala never engaged 20 or more employees is not supported with any documentary evidence and the same is perverse. Ext.D candidly indicates that 27 employees were employed on wages by the Goshala on the material time on 10.04.2000, it has not denied the issuance of the said letter on its letter pad rather A.W.1 has deposed that Goshala has never employed 20 or more employees. A.W.1 has deposed that he has prepared the register for the month of April, 2000 and may file the same, if available but has not purposely filed the same. Hence an adverse inference ought to have been drawn against the respondent but the learned E.S.I. Court has wrongly ignored the same and illegally held that the Goshala has never employed 20 or more employees. The learned E.S.I. Court



