

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.287 of 2009

JUDGEMENT:

This Appeal is filed under section 82 of the Employees' State Insurance Act, 1948 aggrieved by the order dated:31.3.2005 in Order No.AP Ins.VI/52-1802-91/164, dated:24.7.2001 in E.I. Case No.9 of 2002 on the file of the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, holding that the petitioner having 34 persons as mentioned in Ex.R3 and the petitioner is liable to pay contribution as it is coverable.

2. The contention of the appellant is that the appellant is running educational institution, imparting training in information technology and it is not a factory or establishment. As a matter of fact, the said 34 persons were trainees undergoing training in appellant's educational institution. The trainees while undergoing training were paid stipend.

3. The further contention of the appellant is that, software development cannot be considered as a manufacturing activity to come within the ambit of

E.S.I. Act. That there are stray alleged admission under Ex.R1 cannot bind the appellant company and unless substantial proof is adduced by respondent No.2, the claim of respondent No.2 regarding employment of 34 persons should not have been believed. The order under section 45 (a) of E.S.I. Act is contrary to law and it is a stereo typed order passed mechanically without application of mind.

4. Per Contra, the respondents contended that by virtue of G.O.Rt.No.1887, Labour Employment Training and Factories (IMS), dated:26-09-2008, the educational institutions are covered under E.S.I. Act. This petition is filed under section 75 (1) (g) of the EST Act. The appellant/petitioner engaged manufacturing activity of software development with the aid of power and there are 34 employees for wages. At the time of visit of Insurance Inspector, he found 33 employees drawing wages of below 6500/- and the employment strength is 34 . In the list of employees under Ex.R3, the appellant/petitioner himself admitted appointment of 34 employees. Now, he cannot contend and say that there are only trainees.

5. Now, the point that arises for determination is:

“Whether the impugned order suffers from any legal infirmity, warranting interference?”

6. The main contention of the appellant is that 34 persons present are only stipend trainees but not workers.

“Sec.2(12) of ESI Act defines factory as follows:-

‘Factory’ means any premises including the precinct thereof.

a). Whereon 10 or more persons employed or were employed for wages on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

Ex.R1 is the form-1 signed by the Managing Director of the appellant where under he stated that in the year 1/2000, there are 34 employees working with petitioner. The same Managing Director also submitted Ex.R3-list of employees wherein he also mentioned names of 34 persons. A combined reading of Exs.R1 and R3, the own document of the appellant show that there are 34 employees working with the petitioner institution. Now, it is not open to the appellant to say that they have only trainees. As per section 2 (9) defines_____.

Section 2 (9) (iii) defines as _____.

Therefore, section 2 (9) (iii) includes such persons engaged as apprenticeship whose training period is extended to any length of time. Thus, apprenticeship also come within the meaning of employee as defined under Workmen's Compensation Act. As already stated above, the Government of Andhra Pradesh issued Gazette No.582, dated:14-10-2008 (G.O.Rt.No.1887, Labour Employment Training and Factories (IMS), dated:26-09-2008), the State Government of Andhra Pradesh in consultation with the Employees State Insurance Corporation and with the approval of the Central Government, hereby extend the provisions of the said Act to the classes of establishments specified in the sub-joined Schedule, as the same having been previously published in Part-I Extraordinary issue of the Andhra Pradesh Gazette No.662, dated:23-11-2007 vide G.O.Ms.No.2525, LET&F Department, dated:13.11.2007. Thus, Educational institutions also come within the purview of Employees State Insurance Act.

The Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, having considered the documents under Exs.P1 to P3, Exs.R1 to R7 and the

arguments of PW1, came to conclusion that the appellant employed 34 workers whose wages are below Rs.6,500. That the appellant himself furnished Exs.R1 and R3 which establish that there are 34 employees working with appellant / petitioner. Trainees are also included under definition employees under section 2 (9) (a) and proviso therein. Therefore, under the facts and circumstances discussed above, I am of the considered view that the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, rightly held that the appellant / petitioner is having 34 persons as mentioned in Ex.R3 and the petitioner is liable to pay contribution as it is coverable. Such finding do not suffer from any legal infirmity warranting interference.

In the result, the Civil Miscellaneous Appeal is dismissed confirming the orders dated:31.3.2005 in Order No.AP Ins.VI/52-1802-91/164, dated:24.7.2001 in E.I. Case No.9 of 2002 on the file of the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad.

Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

Dated: 11-04-2018

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