

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

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**FAO-346-1998 (O&M)
Date of Decision : 22.5.2018**

Employees' State Insurance Corporation

....Appellant

vs.

Preet Mohinder Singh, Prop. M/s Roxy Bar & Restaurant

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. H.S.Bhatia, Advocate for the appellant.

Mr. Sunny Singla, Advocate for the respondent.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment dated 19.11.1997 of the Employees' State Insurance Court, Jalandhar whereby the challenge to the assessment under Section 45 of the Employees' State Insurance Act, 1948 (for short 'the Act') by the respondent was allowed.

The admitted facts were that the inspection was carried out on 30.3.1989 and upto that date there were more than 10 employees working with the respondent. With effect from 20.10.1989 an amendment was made to Section 2(12) of the Act whereby to come within the definition 'factory' the requirement was reduced from 20 employees to 10 employees. It was on the basis of the report dated 30.3.1989 that assessment was made. On challenging the ESI Court held that for the period under assessment i.e. October 1989 to June 1991 the number of employees were less than 10 and

therefore the respondent was not covered within the definition of 'factory'. Hence the present appeal.

Counsel for the appellant has argued that under Section 2(12) of the Act, fulfillment of any one of two conditions would make an entity exigible to the ESI Act. First, that during the year in question it had more than 10 employees and second, it had more than 10 employees at any time in the previous 12 months. As per the learned counsel for the appellant, the respondent did not challenge the report dated 30.3.1989 (rather relied upon the same) and as per that report it was clear that even upto that date there were more than 10 employees. He has further argued that in terms of this definition the respondent would be exigible to the rigours of the ESI Act. He has further placed reliance upon Section 1 Clause 6 of the Act as per which once the factory comes within the net of ESI Act, it would continue to remain there even if at any point of the time strength of its employees fell below the minimum employees. Counsel for the respondent is not in a position to counter these arguments.

In these circumstances, it has to be held that since in a period of 12 months prior to 20.10.1989 the respondent had more than 10 employees it would be covered under the definition of 'factory' as laid out under Section 2(12) of the Employees State Insurance Act 1948 and further in view of Section 16 of the said Act it would continue to be exigible to the same even if the number of the employees fell below 10 for any subsequent years.

Resultantly, the appeal stands allowed and the impugned order is set aside.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

22.5.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No