

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.03.2021
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 2267 of 2013
and MP.1 of 2013

M/s.Addison & Co.Ltd.,
Rep. By its Co.Secretary,
803, Anna Salai,
Chennai - 600 002.

..Appellant

Vs

1.The Presiding Officer,
The Employees Insurance Court,
(Principal Labour Court),
Chennai.

2.The Employees State Insurance Corporation,
Panchdeep Bhavan,
143, Sterling Road,
Chennai - 600 034.

..Respondent

Appeal filed under Section 82 of the ESI Act to set aside the order passed by the first respondent the Employees Insurance Court (Principal Labour Court), Chennai dated 17.05.2013 in E.I.O.P.No. 225 of 2001.

For Appellant : Mr.Shivathanu Mohan
for M/s.S.Ramasubramaniam & Assc.

For Respondents: R1 - Court
Mr.G.Bharadwaj for R2

JUDGMENT

The order dated 17.05.2013 passed in E.I.O.P.No. 225 of 2001 is under challenge in the present civil miscellaneous appeal.

2. The substantial questions of law raised by the appellant in the appeal on hand are as follows:

"A. Whether the ESI Court is in the teeth of the certified standing orders providing for enrolment of trainees as a category, and in the absence of any complaint from the trainees could go behind the enrolment of the trainees and hold that the trainees are

actually employees within the meaning of Section 2(9) of the Act notwithstanding the certified standing orders.

B. Whether in the absence of any legal evidence, the ESI Court term bilateral contract training into one of employment, a function that is within the jurisdiction of Industrial Tribunal under Industrial Disputes Act, 1947, that too only upon a complaint/reference at the instance of a trainee."

3. Learned counsel appearing on behalf of the appellant mainly contended that the ESI Court has exceeded its jurisdiction by deciding who are all the employees of the appellant/company. Such a power has not been vested with the ESI Court and, therefore, they have violated the provisions of the Act. It is further contended by the learned counsel that the appellant/company is having certified standing orders wherein the scheme for apprenticeship training is provided. The period of training is two years wherein the certified standing order contemplates the provision for apprenticeship training with reference to Section 2(9) of the Act. The appellant/company is exempted from paying contribution and, therefore, it is an error apparent on the part of the authorities in making an assessment and these factors were considered by the ESI Court also.

4. Learned counsel appearing on behalf of the appellant mainly contended that the ESI Court has not only exceeded its jurisdiction but also given a finding with reference to the employees and, therefore, the order per se is unsustainable. When there is provision for apprenticeship and the details regarding apprenticeship were also furnished by the appellant/company and further the certified standing orders also contemplates that there is no reason whatsoever to confirm the order passed by the ESI Authorities and therefore, the order passed by the ESI Court is liable to be set aside.

5. Learned counsel appearing on behalf of the second respondent objected the said contention by stating that undoubtedly Section 2(9) of the Act contemplates exclusion of apprenticeship. However, the ESI Court is empowered to adjudicate the disputes with reference to the employees. In this regard, Section 75 of the Act stipulates the matters to be decided by the ESI Court and if any question or dispute arises as to whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution can be decided by the Court, and, therefore the very contention raised that the ESI Court has no jurisdiction is untenable. The ESI Court is well within its powers to decide whether the person is an employee or not and whether he is liable to pay contribution or not. This being the power conferred to the ESI Court under Section 75 of the

Act, the very contention that the Court has no jurisdiction cannot be accepted at all.

6. It is further contended by the learned counsel for the second respondent that all such facts and circumstances were adjudicated by the ESI Authorities as well as the ESI Court elaborately and the questions of law raised are also relatable to the factual circumstances and the appeal is to be dismissed even on the ground that no acceptable substantial question of law has been raised.

7. This Court is of the considered opinion that the appellant was not able to establish that the certified standing orders contains the provision for apprenticeship training. The said provision contemplates that "the employer produced a scheme of apprenticeship wherein it had been stated that the training scheme is for 2 year and at the end of the 2nd final evaluation will be made, the right to terminate the apprenticeship about the payment of stipend, age and qualifications. Annex 6. The employer produce the syllabus for the apprenticeship scheme in English, annex.7." Thus, there is provision under the certified standing orders for apprenticeship. However, the period of two years contemplated under the certified standing orders is directly in violation of the provisions of the Apprenticeship Act itself. The Apprenticeship Act contemplates one year training. Thus, any prescription for apprenticeship training beyond the scope of the Act is certainly untenable. Thus, for all purposes, any apprenticeship has to be considered only for a period of one year as per the statute and in this regard also, the ESI Court has made a specific finding.

8. The Court has to find out whether there is any manipulation in the matter of application of the provisions of the statute. When the appellant/company or any other company made an attempt to mislead or manipulate the factual details in order to avoid contributions under the Act, then the authorities competent are empowered to conduct enquiry and cull out the truth and pass appropriate orders. In the present case, the ESI Authorities conducted inspection and passed an order directing the appellant/company to pay contribution. The said contribution is questioned by the appellant/company and they have approached the ESI Court. The finding of the ESI Court reveals that the appellant company has formulated the company apprenticeship scheme which was marked as Ex.P3 and as per the scheme persons who possess technical qualification have to undergo apprenticeship for a period of two years and in respect of persons who had undergone apprenticeship training under the Apprenticeship Act, 1961 and in respect of the above period will be reasonably one year.

9. Admittedly, in the present case, all of them possess the technical qualifications of ITI or Diploma Holders in Mechanical and Electrical and Electronics Engineering. The Certified Standing Orders by the appellant/company was marked as Ex.P2 wherein the Standing Orders clause 3(e) deals with the apprentice. However, the period of training is not covered in Clause 3(e) of the Certified Standing Orders. Certified standing orders are framed under the enabling provisions of the Industrial Disputes Act. The service conditions and other conditions would be incorporated in the certified standing orders itself. In the certified standing orders, Clause 3(e) deals with the apprentice. The conditions laid down in Ex.P3 apprenticeship scheme were not incorporated. Further, it is nowhere provided in the Certified Standing Orders that the company can have the company apprenticeship scheme. Section 2 (9) of the Act deals with the meaning of employee wherein an amendment was brought by Act 29 of 1989 with effect from 20.10.1989 as "or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment." As per the above definition, the persons engaged as apprentices under the Act or under the Standing Orders of the establishment are not treated as employees from 20.10.89 onwards. Since Ex.P3 Company apprenticeship scheme is the own scheme of the appellant/company and Ex.P3 scheme would not fall within the purview of meaning of apprenticeship and certainly they have to be included within the meaning of the employee.

10. The above findings are unambiguous that the ESI Court adjudicated the facts and arrived at a conclusion that those persons are employees of such an adjudication is permissible with reference to Section 75A of the Act. Thus, there is no infirmity as such in respect of adjudication by the ESI Court whereby all persons stated as apprentices are apprentices or employees within the meaning of the Act. In paragraph 9 of the order, the ESI Court referred the judgment of the High Court of Madras dated 27.04.1998. However, the said judgment was delivered prior to the amendment and may not have any application as far as the facts and circumstances of the case on hand is concerned. However, the facts adjudicated by the ESI Court reveals that the name of one Mr.Kumar was found in Ex.P4 document series. The order itself says that the said Kumar has applied only for job in the appellant/company. However, he was awarded with the company apprenticeship and the said Kumar already had undergone apprenticeship training under the Apprentices Act. Any person, who already undergone apprenticeship training under the specified act, further training by a company cannot be termed as apprenticeship training. The appellant/company employed 1400 workers and out of them 500 persons were employed as apprentices is not acceptable and based on these numbers both the authorities as well as the ESI Court arrived a conclusion that it may not be appropriate to hold that out of 1400 employees 500 employees

were apprentices.

11. There is every reason to disbelieve the factual position as placed by the appellant/company. When there is a reasonable doubt with reference to the factual position, then the authorities as well as the ESI Court has gone into it and made a finding that the persons employed as apprentices would not fall under the exclusion of Section 2(9) of the Act. This being the categorical finding of the Court, this Court do not find any acceptable substantial question of law so as to adjudicate any further issues. Even as per the facts and circumstances, the appellant is not able to make out the case and the findings of the ESI Court are candid and convincing and there is no perversity. Accordingly, the order dated 17.05.2013 passed in E.I.O.P.No. 225 of 2001 stands confirmed and the civil miscellaneous appeal stands dismissed. No costs. Consequently, the connected M.P.No. 1 of 2013 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssm
To

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.The Employees State Insurance Corporation,
Panchdeep Bhavan,
143, Sterling Road,
Chennai - 600 034.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.G.Bharadwaj , Advocate SR.No. 13557

+1cc to M/s.S.Ramasubramaniam & Assoc , Advocate SR.No. 12876
C.M.A.No. 2267 of 2013
and MP.1 of 2013

A.SK(31.03.2021)