IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM No.3873-CII of 2020 in/and
FAO No.1531 of 1999
Date of Decision: 24.05.2022

The Employees' State Insurance Corporation

.... Appellant

Versus

M/s Hindustan Vegetable Oil Corporation Ltd.

.... Applicant-respondent

CORAM: ***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. Nitin Kumar, Advocate
for the applicant-respondent.

Mr. B.S. Bhatia, Advocate
for the non-applicant/appellant.

MEENAKSHI I. MEHTA, J. (ORAL)

CM No.3873-CII of 2020

The applicant-respondent has moved this application for seeking the issuance of the direction for fixing an actual early date of hearing in the main appeal.

Learned counsel for the non-applicant/appellant submits that he has no objection if the main appeal is taken up even today for hearing.

Keeping in view the above-said fact and also the fact that the main appeal pertains to the year 1999 as well as the reasons as mentioned in the present application, the same is allowed and the afore-mentioned main appeal is taken on the Board today itself.

FAO No.1531 of 1999

Feeling aggrieved by the order dated 01.02.1999 passed by the

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learned Judge, Employees State Insurance Court, Amritsar (for short, 'the ESI Court') whereby the petition preferred by the respondent-employer (for short, 'the employer') under Section 75 of the Employees State Insurance Act, 1948 (for short 'the Act of 1948') for seeking declaration to the effect that the appellant-Employees State Insurance Corporation (for short, 'the ESIC') was not entitled to recover the contribution from it in respect of the apprentices/trainees who were paid the stipend during the period from March 1990 to December 1991 and for seeking refund of the amount over-paid by it on the said count, has been disposed of while observing that the apprentices were not the employees and no contribution was payable qua them and also directing the refund of the above-said amount to the employer, the ESIC has preferred the instant appeal.

2. The employer had filed the said petition while averring that it had been engaging the apprentices/trainees in various categories in its establishment under the written contract so as to subsequently absorb them as its regular employees on completion of their training and had so engaged the persons listed in Annexure 'A'. During the above-mentioned period of their training, they were paid the stipend and thus, they were not covered under the definition of "employee" as provided under the Act of 1948 and hence, the ESIC was not entitled to receive the ESI contribution from it (employer) qua these apprentices and therefore, it was entitled to the refund of the amount, so paid by it towards the afore-said contribution.

3. In its written reply, the ESIC contested the claim of the employer on the ground that the said apprentices/trainees were covered

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under the definition of "employee" as provided under the Act of 1948. The parties were put to the trial by framing the issues and they led their evidence, oral as well as documentary, in support of their respective contentions and after appreciating and evaluating their evidence and hearing their learned counsel, the ESI Court passed the impugned order as discussed in the opening para of this judgment.

4. I have heard learned counsel for both the parties in the present appeal and have also perused the record carefully.

5. Learned counsel for the ESIC contends that the above-said apprentices/trainees had not been engaged by the employer under any written contract of apprenticeship and therefore, they did not fall within the definition of 'apprentice' as provided under Section 2(aa) of the Apprentices Act, 1961 (for short 'the Act of 1961') and were, rather, the 'employees' as defined under Section 2(9) of the Act of 1948.

6. Per contra, learned counsel for the employer argues that the said apprentices were engaged by the employer under a written contract for apprenticeship and it being so, they were squarely covered under the definition of the 'apprentice' as contained in the Act of 1961 and the employer was not liable to pay any ESI contribution qua them.

7. However, before adverting to the merits of the matter in hand, this Court deems it appropriate and expedient to refer to the definitions of 'employee' as contained in the Act of 1948 as well as 'apprentice' as provided under the Act of 1961.

Section 2(9) of the Act of 1948 provides as under: -

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"(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and –

(i) xxxx

(ii) xxxx

(iii) xxxx

[or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), [and includes such person engaged as apprentice whose training period is extended to any length of time]....."

Section 2 (aa) of the Act of 1961 reads as under:-

"*apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship".*

8. Now coming to the merit of this appeal, it is pertinent to mention here that PW1 Mr. Ashok Kumar, Senior Officer, Administration with the employer, has categorically deposed during his cross-examination that the employer was paying the stipend to the apprentices in pursuance of the contract and that he had not brought the said contract on that day, while further admitting that it was not available on the file and he also expressed his ignorance regarding the fact as to whether any statement or return was sent to the ESIC, splitting therein the main salaries and the stipend paid to the apprentices. These depositions unequivocally lead to the only irresistible inference to the effect that the employer had not engaged the apprentices under any contract of apprenticeship so as to bring them within the four corners of the afore-quoted definition of 'apprentice' as provided

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under the Act of 1961 and resultantly, it has to be held that they were the employees within the meaning of Section 2(9) of the Act of 1948. It being so, the ESIC was quite justified in receiving the ESI contribution from the employer in respect of these apprentices and therefore, the employer is not entitled to the refund of the amount paid on this score.

9. As a sequel to the fore-going discussion, it follows that the impugned order, as passed by the ESI Court, is not legally sustainable and deserves to be set-aside/reversed. Resultantly, the appeal in hand is allowed and the impugned order is set-aside and the petition, as moved by the employer before the ESI Court, stands dismissed.

(MEENAKSHI I. MEHTA)
JUDGE

24.05.2022
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Whether speaking/reasoned: *Yes*

Whether Reportable: *No*

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