IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 707 of 2022

The Regional Director,
Employees' State Insurance Corporation,
143, Sterling Road,
Chennai – 600 034. ... Appellant

Versus

M/s. PA Security Force,
Rep. by its Proprietor M.Palanisamy,
P.B. No. 2361, 24, U.I.Colony,
1st Main Road, Kodambakkam,
Chennai – 600 024. ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948 against the order of the Employees State Insurance Court (Principal Labour Court), Chennai dated 20.10.2021 made in E.I.O.P. No. 134/2003 to set aside the same.

For Appellant : Ms. G.Narmadha

For Respondent : Mr. Haroon AL.Rasheed
for M/s. T.S.Gopalan & Co.

JUDGMENT

The appeal challenges the order passed by the Employees Insurance Court in E.I.O.P. No. 134/2003 dated 20.10.2021.

2.The brief facts leading to the above appeal are as follows:-

(a) The appellant/corporation inspected the respondent's establishment and on verifying the records found that the respondent had paid a huge sum as conveyance and washing charges for the period from 1999 to 2000 and 2000 to 2001; that the said charges were disproportionate to the wages and are actual wages and therefore, the respondent is liable to pay contribution; that the appellant issued demand notice dated 06.01.2003 directing the respondent to pay Rs.1,41,894/- as contribution for the period from 1999 to 2000 and 2000 to 2001; that on 14.02.2003, the respondent replied and objected to the said demand; and that since the appellant/corporation did not agree with the said objections, it had passed an order under Section 45-A of the Employees' State Insurance Act (hereinafter referred to as 'the Act' for the sake of convenience) directing the respondent to pay a sum of Rs.1,41,894/-.

(b) The respondent challenged the said order before the Employees Insurance Court in E.I.O.P. No. 134/2003. The Employees Insurance Court after considering the petition, counter and the evidence adduced on either side, found that the washing and conveyance allowances paid by the respondent cannot be considered for determination of contribution. The Employees Insurance Court also relied upon the judgment of the Hon'ble Supreme Court in ***Regional Director (Tamil Nadu), Employees' State Insurance Corporation Vs. Mercury Travels, Ltd.,*** reported in ***2007 4 LLN 861,*** while coming to the said conclusion. Aggrieved by the said order, the appellant had preferred the instant appeal.

3.Ms. G.Narmadha, learned counsel for the appellant vehemently submitted that the order of the Employees Insurance Court has to be set aside since the respondent has not produced any evidence to show that the nature of employment required payment of washing and conveyance allowances to such an huge extent which comes to nearly 66% of the total wages. Since the appellant has raised a reasonable suspicion with regard to the nature of payment, the respondent ought to have produced evidence to disprove the same. Since the respondent has not established the same, the Employees Insurance Court ought not to have assumed that the washing and conveyance allowances were paid. The learned counsel also fairly submitted that if it is shown that it was for washing or conveyance allowance, no contribution is required to be made. Since there is doubt and the same has not been clarified by the respondent, the matter may be remanded to the Employees Insurance Court for fresh adjudication.

4.Per contra, the learned counsel for the respondent submitted that the sub clause (2) to Section 2 of the Act states that wages would not include traveling allowances or any sum paid to defray special expenses incurred due to the nature of employment. The respondent was admittedly carrying on the business of security service providing security persons to various companies. Their very nature of employment requires providing uniform to their staff and also giving conveyance allowance to them. The learned counsel further submitted that there cannot be any presumption that merely because the percentage of washing and conveyance allowances came up to 66% of the total wages that the same was not given for the said purpose. The learned counsel relied upon the judgment of the Division Bench of this Court in ***Management of Oriental Hotels, Ltd., Chennai Vs. Employees' State Insurance***

Corporation reported in ***2001 (1) LLN 943*** and the judgment of the Hon'ble Supreme Court of India in ***Employees State Insurance Corporation Vs. Texmo Industries*** reported in ***2021 SCC OnLine Sc 434*** in support of his submissions. Therefore, the demanding of contribution by the appellant is not in accordance with law and the Employees Insurance Court rightly allowed the appeal filed by the respondent and no interference is called for.

5.Admittedly, the respondent had been paying conveyance and washing allowances to the employees. It is also an admitted position in law that if the allowance is either conveyance or washing, which is special expense, then, it cannot be treated as wages. But the question is whether the respondent under the guise of paying conveyance and washing allowances had actually paid wages for which they are liable to pay contribution. It is seen from the records that the appellant had issued a show cause notice on the basis of grave suspicion that washing and conveyance allowances cannot be high and in any event, be 66% of the wages. The respondent had replied to the said notice by stating that their nature of job demands payment of such huge sums towards conveyance and washing allowances. Before the Employees Insurance Court, the respondent examined P.W.1 and the appellant/corporation examined R.W.1 and R.W.2. R.W.1 had stated that he had not obtained any statement from any of the employees with regard to the nature of payment made to them. In view of the admission made by R.W.1 that they did not collect any evidence to show that the washing and conveyance allowances have to be treated as wages, this Court is of the view that there cannot be an order under Section 45-A of the Act on the basis of surmises and conjectures. It is well settled that there cannot be any ceiling fixed for payment of conveyance and washing allowances. If it is conveyance or washing allowance, it is well settled that it cannot be treated as wages. In the absence of any proof let in by the appellant/corporation to show that the payments were not intended to be washing or conveyance allowance, order under Section 45-A of Act is not sustainable. Therefore, the Employees Insurance Court has rightly set aside the said order. This Court finds no infirmity in the said order and hence, the order passed by the Employees Insurance Court is confirmed.

6.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

28.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Employees State Insurance Court (Principal Labour Court),
Chennai.

SUNDER MOHAN, J

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C.M.A. No. 707 of 2022

Dated: 28.07.2023