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C.M.A. No.1000 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1000 of 2020

The Regional Director,
ESI Corporation,
143, Sterling Road,
Chennai – 600 034.

.... Appellant

vs.

P.N. Nagaraj

.... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 82 of the Employees' State Insurance Act, 1948 against the Order and Decree of the Employees Insurance Court (Principal Labour Court, Chennai), dated 20.02.2015 made in E.I.O.P. No.26 of 2008 to set aside the same.

For Appellant

: Ms.G. Narmadha
for Mr.G. Bharadwaj

For Respondent

: No appearance

JUDGMENT

This appeal has been filed by the ESI Corporation aggrieved by the order of the ESI Court, dated 20.02.2015 passed in E.I.O.P. No.26 of 2008.

2. The appellant Corporation has challenged the impugned order



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primarily on the ground that the ESI Court has entertained the petition filed by the respondent under Section 75 of the Employees' State Insurance Act, 1948 (in short "ESI Act"), despite the fact that the said petition is barred by limitation as per the provisions of Section 77(1-A) of the "ESI Act".

3. This appeal is admitted on the following substantial question of law :

Whether the petition filed by the respondent under Section 75 of the "ESI Act" before the ESI Court in E.I.O.P. No.26 of 2008 is barred by limitation as per the provisions of Section 77(1-A) of the "ESI Act".

4. Heard Ms.G. Narmadha, learned counsel for the appellant Corporation. Despite service of notice on the sole respondent, there is no representation on his side.

5. It is an undisputed fact that an order was passed by the appellant Corporation under Section 45-A of the ESI Act against the respondent on 22.05.2002 calling upon the respondent to pay the arrears of ESI contribution for the period from April 1991 to August 1994 and July 1998 to September 2000.



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6. Any appeal as per the provisions of Section 77(1-A) of the “ESI Act”, ought to have been filed, within a period of three years from the date when the Section 45-A order was passed by the appellant Corporation. Admittedly, in the case on hand, Section 45-A order was passed by the appellant Corporation on 22.05.2002, whereas the appeal under Section 75 of the “ESI Act” was filed by the respondent only on 10.02.2008 beyond the period of three years and hence the petition is barred by limitation.

7. Section 77(1-A) of the Employees' State Insurance Act, 1948 reads as follows :-

77. Commencement of proceedings

1. The proceedings before an Employees' Insurance Court shall be commenced by application.

[(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation : For the purpose of this sub-section,—

a) The cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;



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b) The cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time;

PROVIDED that no claim shall be made by the Corporation after five years of the period to which the claim relates;

c) The cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.

2. Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

8. Admittedly, the appeal was filed by the respondent aggrieved by the order dated 22.05.2002, passed by the ESI Corporation under Section 45-A of the “ESI Act” only on 10.02.2008, which is beyond the period of three years from 22.05.2002 when the cause of action for filing the appeal arose for the respondent. The respondent himself has admitted in his petition filed under Section 75 of the “ESI Act” before the ESI Court in E.I.O.P. No.26 of 2008 in the cause of action paragraph that the cause of action for filing the petition arose at Chennai on 22.05.2002, when the appellant Corporation issued the Section 45-A order.



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9. The ESI Court under the impugned order, by a perverse finding despite the fact that admittedly the petition was filed by the respondent only on 10.02.2008, beyond the period of three years from the date when the cause of action arose, has rejected the contention of the appellant Corporation on the ground that they have not pleaded and proved with evidence the limitation defence taken by them. On the contrary in the written statement they have categorically pleaded that the petition filed by the respondent under Section 75 of the “ESI Act” is barred by limitation as the same has been filed beyond the period of three years as the order was passed by the appellant Corporation under Section 45-A of the “ESI Act” on 22.05.2002 itself. By total non application of mind to the admitted fact that the petition filed by the respondent is hopelessly barred by the law of limitation as per Section 77(1-A) of the “ESI Act”, the ESI Court has passed the impugned order which has to be necessarily set aside.

10. For the foregoing reasons, the Second Appeal formulated by this Court for admitting this appeal in paragraph No.3 of this judgment is answered in favour of the appellant by holding that the appeal filed by the respondent before the Employees Insurance Court (Principal Labour



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Court, Chennai) in E.I.O.P. No.26 of 2008 is barred by limitation as per the provisions of Section 77(1-A) of the “ESI Act”.

11. In the result the impugned order of the ESI Court, dated 20.02.2015 passed in E.I.O.P. No.26 of 2008 is hereby set aside and the Civil Miscellaneous Appeal is allowed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.

vsi2



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To
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1. The Presiding Officer,
(Principal Labour Court),
Employees Insurance Court,
Chennai.
2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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