



C.M.A.(MD)No.1650 of 2013

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Dated: 21.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1650 of 2013

The Joint Regional Director
Employees State Insurance Corporation,
Sub Regional Office
1-B, Old Post Office Street,
Tallakulam, Madurai and 2nd West Street,
K.K.Nagar,
Madurai- 625 020

.. Appellant/ Respondent

Vs.

L.Subbaiah

.. Respondent/Petitioner

Prayer : This Civil Miscellaneous Appeal filed under Section 82 of the E.S.I Act, 1948 against the decree and judgment of the ESI Court(Labour Court) Madurai passed in ESIOP No.39 of 2001 dated 16.05.2013.

For Appellant : Mr. R.Ravikumar

For Respondent : Mr.Karthikeyan
for Mr.P.Chandrabose

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in ESIOP No.39 of 2001 on the file of the Labour Court,



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Madurai, wherein the respondent herein has filed petition before the ESI Court challenging the order passed by the authorities and the same was allowed. As against the order passed by the Labour Court, the present appeal has been filed by the ESI authorities.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. The brief facts of the petition before the Labour Court are as follows:

The petitioner concern is a Bharat Petroleum Outlet and engaged only four employees. Two partners are looking after the petrol bunk and they have also engaged one part time Accountant Saleem Deen and he was not authorised to look after the petitioner concern and to sign on behalf of the petitioner. Whiles on 13.08.1998, ESI Inspector has inspected the petitioner's bunk and at that time one pump attender, cashier and part time Accountant were alone present. The ESI Inspector has signed in the attendance register and then he had written something in the petitioner's company letter pad and compelled the Saleem Deen to sign the same. Due to the force he received the letter from the Manager



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stating that the petitioner has engaged 11 employees and directed them to comply with the Act. On 23.11.1999 the petitioner has issued letter to the ESI Corporation mentioning the facts happened on the date of inspection. Thereafter the Manager of ESI Corporation neither visited the petrol bunk nor sent any reply. In the meantime the respondent issued notice dated 24.11.1998 under Form C-18 proposing to assess contribution of Rs.90,427/- from 13.08.1998 to 31.03.1999. The petitioner attended personal hearing and filed detailed reply, in spite of that the respondent has passed impugned order dated 31.10.2000 fixing the liability. The copy of inspection report was not furnished to the petitioner. Hence he filed the petition to declare the impugned order passed by the respondent is null and void.

4. The counter filed by the respondent are as follows:

The petition is not maintainable either in law or facts. Infact the ESI inspector visited the petrol bunk on 31.08.1988 and found 11 employees are working for wages and four persons were working as found in the attendance register and two persons were working in the service station situated in the premises and four other persons found employed for wages in addition to Saleem Deen. The Inspector has issued notice to the Manager of the bank and obtained his



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signature. On the basis of inspection report petrol bunk was covered under the ESI Act and number was also allotted through C-18 notice and the same was issued on 24.11.1999 for the period from 31.08.1998 to 31.03.1999 on the basis of the assumed average wage for Rs.3575/- per employee per month. The respondent also appeared before the ESI Authority through advocate for personal hearing and raised objection. After considering the objection raised by the petitioner the respondent passed the order. The copy of the ESI Inspection Report shall not be furnished *suo motu*, hence the petition is liable to be dismissed.

5.Before the Labour Court on the side of the petitioner they have examined P.W.1 and marked exhibits Ex.P.1 to Ex.P.10 and on the side of the respondent R.W. 1 was examined and marked documents Ex.R.1 to R.5.

6. The Labour Court after hearing both sides and considering the evidences adduced on both sides allowed the application filed by the petitioner and set aside the order passed by the ESI authorities. Aggrieved over by the said order the present appeal has been preferred by the ESI Authorities.



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7. The learned counsel appearing for the appellant would contend that the respondent/ petrol bunk is covered under the ESI Act and more than 11 persons were working in the respondent company and the ESI authorities have inspected the bunk/respondent on 31.05.1998 and also prepared a report and also obtained signature of the Manager of petrol bunk and copy was also served. The respondent have not paid the contribution amount and thereby the authorities have passed order on hearing the respondents. The respondent not appeared for hearing. Therefore the order passed by the authorities is in order but the Tribunal without considering the said aspects erroneously allowed the petition and set aside the order passed by the ESI authorities. Therefore the order passed by the Labour Court is liable to be set aside.

8. The learned counsel appearing for the respondent would contend that in the petitioner company only four persons were engaged as employee and no where they engaged 11 persons as stated by the appellant and the inspection report was not furnished to the respondent and the authorities they themselves assumed the average wages. On the date of inspection no such 11 persons were



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employed. On behalf of the petitioner in the main original petition P.W.1 was examined and marked documents. Based on the evidences and documents the lower court has set aside the order passed by the authorities holding that the report of the inspection did not contain details and he was not served with the copy of the report of the inspector which form basis of the impugned show cause notice. Therefore the Tribunal has passed reasoned order and thereby the present appeal is liable to be dismissed.

9. Heard both sides and upon hearing both sides and on perusal of records, the point for determination in this appeal is whether any substantial question of law involved in this case and the appeal has to be allowed or not?

10. This Court at the time of admission has not framed any substantial question of law. In this case the appellant has passed order under Section 45-A of the ESI Act for contribution of ESI amount. According to the appellant, the respondent company is covered under the ESI Act since more than 10 persons were working in the respondent/petrol bunk. According to the respondent only four persons were employed in the petrol bunk and no eleven persons were employed. The Inspection authorities inspected the premises



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and obtained signature from the part time employee who is not a full time employee and noted that more than 10 persons were working in the premises. The inspection report also not furnished to the respondent.

11. In this context the appellant /respondent himself admitted that furnishing copies is not a *suo motu*. The copy of the receipt notice was duly signed by the employee of the respondent/Petitioner Therefore it shows that the appellant /respondent has not served inspection report. The trial Court in this context discussed so many judgment of Hon'ble Supreme Court and other High Court and held that employer have been insisting the respondent to furnish him the copy of the inspection report but the same has not been furnished to him thereby the affected party/employer has not been given just and fair opportunity to place his plea and also furnished the copy of inspection report which is the basis for issue show cause notice mandatory and not optional, thereby passed the impugned order by setting aside the order passed by the appellant/ESI authorities . Therefore the above said order passed by the authorities is not in accordance with law. The labour Court after elaborate discussion correctly applied the law and allowed the petition by setting aside the order passed by the ESI authorities. Therefore there is no



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infirmity or perversity found in the order passed by the Labour Court.

12. Further as per section 30 of the ESI Act appeal will lie only on substantial question of law. In this case though the matter was admitted by this Court at the time of admission no substantial question of law is framed. On perusal of records it is observed that no substantial question of law is involved in this case and thereby the appeal is liable to be dismissed.

13. In the result, the Civil Miscellaneous Appeal stands dismissed. No costs.

21.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Labour Court, Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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