



C.M.A(MD)No.882 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.04.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.882 of 2014

The Regional Director,
Employee State Insurance Corporation,
No.143, Sterling Road,
Chennai – 34.

... Appellant

Vs.

M/s.Harwin Chemicals (P) Ltd.,
Juman Centre", 43A/2,
Promendade Road, Trichy.
represented by its
Managing Director
R.Senthil Nathan

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act 1948, against the order, dated 06.12.2012, passed in ESI OP.No. 15 of 2005, reinstate the contribution order dated 11.07.2005 of the said corporation and allow this civil miscellaneous appeal with necessary directions in favour of the appellant.

For Appellant : Mr.Ganapathisamy
For Respondent : Mr.G.Mohankumar



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JUDGEMENT

The respondent here is a private limited company. The appellant/ ESI Corporation had issued Form C-18 notice, proposing to include the apprentice under the ESI Scheme and the company resisted to include the apprentice. After hearing the company, the ESI Corporation had included the apprentice under the ESI Scheme, vide order, dated 11.07.2005. Aggrieved over the same, the company had preferred ESI Original Petition No.15 of 2005. After considering the issue raised by the company, the said original petition was allowed. Aggrieved over the same, the present appeal is filed by the ESI Corporation.

2. The contention of the ESI Corporation is that there is no provision to include apprentice prior to 20.10.1989. When the issue was challenged before the Supreme Court, the Hon'ble Supreme Court, vide order dated 08.10.1975 has held that since the Act has not included the apprentice under the ESI Scheme, then apprentice cannot be included. However, the issue was left open to the Government to consider for



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including the apprentice. Thereafter, the Act was amended on 20.10.1989 by including the apprentice under the ESI Scheme. As per the amendment provision the apprentice ought to be included, but the Tribunal has failed to consider the amendment provisions and hence the present appeal is filed.

3. However, the Learned Counsel appearing for the company submitted that even though the apprentice is included in the subsequent amendment, two exemptions are granted in the definition clause, wherein, any apprentice who come under the provision of Apprentice Act and the apprentice coming under the Standing Orders are not included in the definition. In the present case, the Tribunal has held that the apprentices in the present case are coming under the Standing Orders, hence they cannot be included.

4. The Learned Counsel appearing for the appellant submitted that the Tribunal ought to have passed an order after impleading the alleged apprentice. After granting an opportunity to the said apprentice, the



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Tribunal ought to have passed an order. And relied on the judgment rendered by the Hon'ble Supreme Court in ***ESI Corporation vs. Bhakra Beas Management Board and Another*** in Civil Appeal No.8335 of 2004 dated 17.09.2009. In the said case ESI Court had passed an order in favour of the ESI Corporation but against the respondent namely Bhakra Beas Management Board. In such circumstances the Hon'ble Supreme Court held that the order ought to have been passed by impleading the Bhakra Beas Management Board or atleast the workers of the said Board. In the present case the facts are entirely different. In the present case the issue is whether the establishment ought to contribute for the apprentice.

5. Further, if the apprentice comes within the definition (and not under the exemption clause) and if the apprentices are affected, then the said apprentices have every right to litigate before the appropriate forum. In other words, if the apprentices are aggrieved, then they can litigate separately and it is not necessary to implead them as parties. Therefore, the said judgement is on the different facts altogether and the same is not applicable to the present facts of the case.



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6. The learned Counsel appearing for the appellant further relied on CMA(MD)No.597 of 2016 dated 05.12.2017. On perusing the same, it is seen that the establishment had taken a stand that only seven employees are working the establishment and hence the ESI is not applicable. In such circumstances, the Hon'ble Court held that the workers ought to be heard. Again, in the said judgment the facts are altogether is different and the said judgment is not applicable.

7. The Learned Counsel appearing for the appellant had submitted that the apprentices were included after the amendment dated 20.10.1989 and relied on W.P.(MD)No.21520, dated 16.06.2011, hence the apprentice in the establishment ought to be included in the ESI Scheme and the relevant portion of the judgment is extracted hereunder:

"10. We may, therefore, turn to the definition of employee under Section 2(9) of the Act. So far as it is material, Section 2(9) reads as follows:

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



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(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere....

It is clear that in order to be an employee a person must be employed for wages in the work of a factory or establishment or in connection with the work of a factory or establishment. Wages is defined under Section 2(22) and means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or layoff and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include....”

8. Admittedly, in the definition clause the apprentices were included, but in the definition two exemptions were granted. The Hon'ble High Court has dealt with the main definition alone. In the said definition it is stated that if any apprentice is coming under the Apprentice Act, 1961, and any apprentice coming under the Standing Orders, they are not included in the definition. Since the said judgment is not dealing with exemption clause and the said judgment cannot be relied on.



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9. The Learned Counsel appearing for the respondent relied on judgment dated 12.07.2023 rendered in C.M.A.(MD)No.921 & 953 of 2018. The Hon'ble High Court had relied on the judgment rendered by the Hon'ble Supreme Court in the case of ***Regional Provident Fund, Mangalore Vs. Central Arecanut & Coc Marketing and Processing Co-operative Ltd., Mangalore*** reported in ***2006 2 SCC 381***. In the judgment rendered by the Hon'ble Supreme Court it has been held that the apprentices' appointment under the Standing Orders are exempted. In the said case the respondent authorities had taken a stand that the "Standing Order of the Establishment" are exempted but not those who are appointed under the "Standing Order of a factory". Hence the Hon'ble Supreme Court had held that the Standing Orders of the establishment and the Standing Orders of the factory are one. The relevant portion of the judgment is extracted hereunder:

"26. The Hon'ble Supreme Court in a judgment reported in (2006) 2 SCC 381 (Regional Provident Fund Commissioner, Mangalore Vs. Central Arecanut & Coc Marketing and Processing Co-operative Ltd., Mangalore) had an occasion to consider the exemption



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with regard to the apprentices who are appointed by a factory through Standing Orders.

In the said judgement, the Provident Fund Authorities had initiated proceedings to determine the contribution for the stipend paid to the apprentices in a chocolate factory. The Writ Court as well as the Writ Appellate Court had rejected the demand of the Provident Fund Authorities. The Regional Provident Fund Commissioner had approached the Hon'ble Supreme Court seeking to reverse the order of the High Court. The Hon'ble Supreme Court found that there are no certified Standing Orders for the said factory and they are governed by Model Standing Order as contemplated under Section 12(A) of the Industrial Employment (Standing Orders) Act 1946. The apprentices were appointed in that factory only under the said Model Standing Orders. The Hon'ble Supreme Court was pleased to observe that the trainees were apprentices engaged under the Standing Orders of the establishment and they are liable to be excluded from the definition of employee as per Section 2(f) of the E.P.F. Act. In the case on hand, the both the factories are governed by their respective Certified Standing Orders which are marked before the E.S.I. Court.

27. In the judgment cite supra, the Hon'ble Supreme Court while considering the apprentices appointed in a



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chocolate factory under the Model Standing Orders has categorically held that they are exempted from the purview of E.P.F. Act. Therefore, it is clear that the Hon'ble Supreme Court has categorically found that there is no distinction between the standing order of an establishment and the standing order of a factory. Hence, the contention on the side of the E.S.I. Corporation that only the apprentices under the Standing Order of the establishment are exempted but not those who are appointed under the Standing Order of a factory is not legally sustainable.”

10. The same issue was also considered by the Hon'ble High Court in C.M.A.(MD)No.861 of 2022 dated 23.03.2023. The Hon'ble High Court has considered the definition of employee under Section 2(9) of the ESI Act after amendment with effect from 01.06.2010. In the amended definition of ESI Act also the apprentice engaged under the Apprentice and the Standing Orders are exempted.

11. The learned Counsel appearing for the appellant corporation submitted that the stipend paid to the apprentice ought to be treated as salary and consequently they should be brought under the purview of ESI



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Act. It is settled principle that the stipend paid to the apprentice cannot be treated as salary paid to the employee or wages paid to worker. When it is proved that stipend is paid then they will come as apprentice under the Standing Orders. Therefore, they are exempted under ESI Act.

12. After perusing the aforesaid judgments, this Court is of the considered opinion that the judgment rendered in CMA(MD)No.921 and 953 of 2018 and CMA(MD)No.861 of 2022 are more relevant and answered to the specific point that is raised before this Court. In the present case also, the apprentices are appointed under the Standing Orders. Therefore, the above said two judgments are applicable to the present case. Therefore, the substantial question of law raised by the appellant is answered against the appellant.

13. The learned Counsel appearing for the ESI Corporation submitted that the workers in the respondent company is lesser than the apprentice engaged by the company. In other words, the apprentices are over and above the regular employees in the said company, hence all the



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apprentice ought to be brought under the purview of the ESI Act. The establishment in order to avoid paying the contribution had categorized the workers as apprentice, hence contribution ought to be paid by the establishment or atleast some of them ought to be brought under the employees' category. The present plea was raised before the Tribunal and the Tribunal has held that the said plea is illogic and the same cannot be accepted. Further there is no bar in employing more apprentice in the company. This Court is of the considered opinion the Tribunal is right in rejecting the said plea since there is no bar in engaging more apprentice than the employee. All the substantial questions of law are answered against the appellant ESI Corporation.

14. For the reasons stated supra, this Court is inclined to dismiss the present appeal and accordingly dismissed and the order passed by the Tribunal is confirmed.

15. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.



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

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S.SRIMATHY, J.

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To

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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JUDGMENT made in
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