Before Jaspal Singh, J.

EMPLOYEES STATE INSURANCE CORPORATION AND OTHERS — *Appellants*

versus

PUNJAB STATE CO-OPERATIVE MILK PRODUCERS FEDERATION LIMITED AND ANOTHER—*Respondents*

FAO No.845 of 1993

May 09, 2017

Employees State Insurance Act, 1948— S.2(9)(a)—Pursuant to Notification dated 24.04.1982, the Deputy Regional Director, directed Respondent No.2 to pay additional contribution on the wages—Amount deposited under protest, but subsequently payment of the amount challenged before the Employees State Insurance Court Bathinda, by Respondent No.2—Application of Respondent No.2 accepted—Appellants filed appeal before High Court, claiming that employees of a contractor working at the factory of respondents on construction work are employees of their contractor—Above plea of appellants negative—High Court held that an employee who is not directly employed by the principal employer will not be eligible for contribution under S.29(i) of the Act—Appeal dismissed.

Held, that sole question which requires determination in the instant appeal is whether the labour employed by the respondents and the wages paid by them to the labour can be considered to have been paid by the respondents and fall within the scope of Section 2(9) of the Act. Section 2 (9) defines 'employees' which covers only employees who are directly employed by the principal employer. It is imperative that any employee who is not directly employed by the principal employer cannot be eligible under Section 2(9)(i). In the instant case, the employees concerned are cannot be held to be directly employed by the respondents and thus no contributions are liable to be deducted under the provisions of the aforesaid Act from the employers……

……Thus, when labour engaged by the respondents do not fall within the ambit of Section 2(9)(i) of the Act, no deduction can be made and further if made, the same is illegal. Thus, this Court does not find any illegality or infirmity in the impugned judgment dated February 12, 1993 passed by the Judge, Employees State Insurance Court, Bathinda, whereby the order dated May 15, 1987 passed by Deputy Regional Director, EXI (C), Chandigarh has been set aside.

(Para 8)

Adarsh Malik, Advocate,
for the appellants.

Sehaj Bir Singh, Advocate,
for respondent No.1.

JASPAL SINGH, J.

(1) Aggrieved against the judgment and decree dated February 12, 1993 passed in Civil Misc. No.54 of August 23, 1989 passed by the Employees State Insurance Court, Bathinda, Employees State Insurance Corporation for brevity 'Corporation' and others have approached this Court by way of instant appeal, whereby the order/letter dated May 15, 1987 passed by Deputy Regional Director, E.S.I.(C) was set aside.

(2) The brief facts giving rise to the instant appeal are that there are various milk plants being owned and controlled by respondent No.1 including one at Bathinda. Respondent No.2-The Guru Co-operative Milk Producers Union Ltd., Milk Plant, Bathinda is being run independently through its Managing Director. The Government issues a Notification dated April 23, 1982 which was made operative w.e.f. April 18, 1982. According to the said notification, Deputy Regional Director issued letter/order dated May 15, 1987 calling upon the respondent No.2 to pay a sum of Rs.7177-85 paisa as additional contribution on the wages for the year 1984-85 to 1985- 86 on the basis of inspection carried out by him. Though, the said amount was deposited under protest on October 28, 1987. However, subsequently, the aforesaid letter/order dated May 15, 1987 was challenged by the present respondents by moving an application before the Employees State Insurance Court, Bathinda, which was registered as Civil Misc. Application on August 23, 1989. The said application was accepted and the letter/order dated May 15, 1987 passed by Deputy Regional Director, E.S.I.(C) Chandigarh was set aside vide impugned order dated February 12, 1993.

(3) Dis-satisfied with the aforesaid judgment and decree dated February 12, 1993, appellants have approached this Court for setting aside thereof and revival/restoration of the order dated May 15, 1987 passed by Deputy Regional Director, E.S.I. (C), Chandigarh.

(4) While assailing the impugned judgment dated February 12, 1993, it has been argued with vehemence by the learned counsel for the

appellant that the same is absolutely against the settled canons of law as well as provisions of the Employees State Insurance Act. In fact, trial court has mis-interpreted the provisions particularly Section 2(9) E.S.I. Act (for short 'Act') while observing that respondents-Punjab State Co-operative Milk Producers Federation Ltd. does not come within its purview. It has wrongly concluded that the employees of the contractor working in the factory premises of the respondents on construction work are not its employees. Hence, no contribution(s) are payable in respect of their wages. While referring to the judgment of the Hon'ble Apex Court in case ***Mulla Alibhai & ors.*** versus ***Madrasai Hakimia and Coronation High School & ors.***[1], it has been submitted by the learned counsel for the appellants that the employees of the contractor working in the factory premises of the employer are deemed to be employees of the employer and the contribution under the act is payable. Not only this, even it has been clearly laid down by the Hon'ble Supreme Court that workers engaged in the extension of the factory building are also employees and fall within the purview of Section 2(9) of the Act, to the similar fact is the judgment of the Full Bench of this Court in case ***Employees State Insurance Corporation, Chandigarh*** versus ***Oswal Woollen Mills Ltd., Millar Ganj, Ludhiana***[2]. Thus, a casual employee engaged in construction work in a factory or even in the extension of the factory builiding is a employee within the ambit of Section 2(9) of the Act. Thus, an employer is liable to pay the contribution(s) as has been sought in the instant appeal from the respondents. The impugned letter/order dated May 15, 1987 has wrongly been held to be illegall, null & void by the Employees State Insurance Court, Bathinda.

(5) It has further been stressed by the learned counsel for the appellants that even the account books of the respondents showed that a sum of Rs.83387.04 had been spent on the construction work. There is no proof that the out of the said amount wages amounted to Rs.27872.99 only. Otherwise also, respondents have not cared to produce any of the contractors in the witness box to establish the prescribed amount of wages paid by them to the labour. Therefore, contributions were payable on the entire amount of Rs.83387.04. Even, lower court has grousely erred in holding that the contributions are not payable on Rs.1934.75 on account of bottle breaking allowance. In case, there is no breakage, the allowance is pocketted by the employees

[1] 1976 AIR (SC) 1476
[2] 1980 P.L.R. 656

and forms part of their wages. Thus, considering the case of the appellants any of the angles, impugned order dated February 12, 1993 passed by Employees State Insurance Court, Bathinda is liable to be set aside.

(6) On the other hand, Mr. Sehaj Bir Singh, Advocate representing the respondent No.1 has strongly opposed the various contentions put forth by the learned counsel for the appellants while submitting that there is no infirmity, illegality or impropriety either in the findings recorded by the lower court on the issues or final conclusion arrived at by it. The findings recorded are absolutely in consonance with the evidence available on file as well as settled propositions of law and as such, does not call for any interference by this Court. The trial court has rightly concluded that the respondents are not liable to pay any kind of contributions as the labour workers were not under its control. They are not liable to pay the contributions on the amount paid to the labour as it does not fall in the category of employer as defined in Section 2(9) of the Act.

(7) This Court has given a deep thought to the aforesaid rival submissions made by learned counsel for the parties and have minutely scanned the records available on file.

(8) The sole quesiton which requires determination in the instant appeal is whether the labour employed by the respondents and the wages paid by them to the labour can be considered to have been paid by the respondents and fall within the scope of Section 2(9) of the Act. Section 2 (9) defines 'employees' which covers only employees who are directly employed by the principal employer. It is imperative that any employee who is not directly employed by the principal employer cannot be eligible under Section 2(9)(i). In the instant case, the employees concerned are cannot be held to be directly employed by the respondents and thus no contributions are liable to be deducted under the provisions of the aforesaid Act from the employers. To fortify the aforesaid observations, we can have the reference of the pronouncement of the Hon'ble Apex Court delivered in case ***Managing Director, Hassan Coop. Milk Produ. Society Union Ltd.*** versus ***Assistant Regional Director, E.S.I.C.***[3] and ***Royal Talkies, Hyderabad*** versus ***Employees State Insurance Corporation***[4]. Thus, when labour engaged by the respondents do not fall within the ambit of Section

[3] 2010 (2) SCT 792
[4] (1978) 4 SCC 204

2(9)(i) of the Act, no deduction can be made and further if made, the same is illegal. Thus, this Court does not find any illegality or infirmity in the impugned judgment dated February 12, 1993 passed by the Judge, Employees State Insurance Court, Bathinda, whereby the order dated May 15, 1987 passed by Deputy Regional Director, EXI (C), Chandigarh has been set aside.

(9) As an up shot of the aforesaid discussion, this Court does not find any merit in the instant appeal. As such, it stands dismissed. Consequently, impugned judgment and decree dated February 12, 1993 is upheld.

(10) No order as to costs.

P.S. Bajwa