Employer cannot deprive the trainees from ESI Benefits

Sub Section 9 of Section 2 of the ESIC Act has excluded and disregarded the understudies connected under the Apprentices Act, 1961, along these lines from here the end can be drawn is that 'Learner' might be treated as 'Employee'

Section 9 "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-

(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; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment

(or **any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), and includes such person engaged as apprentice whose training period is extended to any length of time;**

Wages under the ESIC is defined u/s 2(22) and includes all the remuneration paid or payable in cash to an employee.

In **Andhra Prabha (P) Ltd. vs E.S.I. Corporation on 5 February 1996 Equivalent citations: 1996 (2) ALT 301, (1996) IILLJ 389 AP** the principle was laid as under:-

- The Employees State Insurance Act is a beneficial piece of legislation to protect the interests of the workers.

- Therefore, the interpretation of the provisions of the Act has to be made keeping in view the objects of the Statute.
- The employer cannot be allowed to circumvent the provisions of the Act in the disguise of ambiguous designations. Though the designation 'Apprentices'/Trainees gives an impression at the first blush that they are not regular employees, but if the veil is lifted and the real facts are ascertained, they are in fact found to be working as regular employees. Thus, the employer cannot be permitted to flout the Law.

Andhra High Court

Andhra Prabha (P) Ltd. vs E.S.I. Corporation on 5 February, 1996

Equivalent citations: 1996 (2) ALT 301, (1996) IILLJ 389 AP

Author: G Bikshapathy

Bench: P V Reddi, G Bikshapathy

ORDER G. Bikshapathy, J.

1. The appeal is filed against the orders passed by the Employees Insurance Court in E.I. Case No. 24/87, dated December 11, 1991.

2. A few facts are necessary for proper appreciation of the case. The appellant - company is an establishment situated at Hyderabad and covered under the Employees' State Insurance Act. It is engaged in publication of daily newspaper. The employees of the appellant - company are governed by the provisions of Palekar Award. It is the case of the appellant that it has been paying the E.S.I, contributions in accordance with the provisions of the Act. But however, the E.S.I. Corporation demanded the E.S.I, contributions in respect of Apprentices/Trainees who are not covered by the provisions of the Act. Therefore, the appellant is only aggrieved to the extent of demand of the E.S.I. Contribution in respect of the Apprentices/Trainees.

It is the case of the appellant that they do not fall under Section 2(9) of the Employees State Insurance Act and therefore the question of making any contribution to the E.S.I., does not arise.

It is also the case of the appellant that the contributions in respect of the said Apprentices/Trainees were paid earlier under a mistaken impression that they are also covered by the provisions of the Act. The contributions however were paid under protest. The case was resisted by the Corporation stating that the establishment of the appellant was covered under the Employees State Insurance Act with effect from March 5, 1977. The

establishment being a newspaper establishment and the appellant being the principal employer is liable to pay the contribution under Section 40(1) in respect of his employees either employed directly or through an immediate employer. Thus, the Corporation contended that there is no distinction for coverage of temporary and permanent employees and all the persons working for wages are liable to contribute for the E.S.I. The appellant-company itself stated in the letter dated February 19, 1986 that no instructors were appointed for the purpose of training and they were not sponsored under the apprentices Act.

3. The Court framed the following issues:

(1) Whether the petitioner - establishment not engaged in any manufacturing activity?

(2) Whether the Apprentices/Trainees are not employees under the provisions of the E.S.I.Act?

(3) To what relief?

4. One witness was examined for the appellant and Exhibits P-1 to P-10 were marked. No witnesses were examined on behalf of the Corporation and no documents were marked.

5. The Personnel Officer in his deposition stated that the appellant - company engaged apprentices, the period being 6 months and above and that the apprentices will be imparted training during the period of apprenticeship/training and that there is no obligation on the part of the establishment to absorb them. These persons were paid only the stipend and no allowances like H.R.A. etc. and bonus are paid to them. However, from Exhibits P-6 to P-10, it was established that in respect of trainees, the management deducted the Provident Fund and Employees State Insurance contributions and the witness stated that they paid these contributions under protest. It is also stated by the witness that the establishment has been paying 60% of the stipend as Basic and the remaining as Dearness Allowance and House Rent Allowance to the trainees as required under the Palekar Award. The court after considering the evidence and the record came to the conclusion that the petitioner failed to establish that the persons mentioned in An-nexure-A are not apprentices or trainees and that they are the employees working under the appellant - establishment. By orders dated December 11, 1991, the Court rejected the application of the Management in E.I. Case No. 24/37 against which the present appeal arises.

6. The learned counsel for the appellant Sri. S. Ravidranath, submits that the judgment of the Court below is illegal and contrary to law.He submits that the apprentices/trainees are

not covered by the definition under Section 2(9) of the Act and therefore no contribution need be paid to them. Consequently, the order of the Employees' Insurance Court is liable to be set-aside. He further submits that a similar issue was considered by this Court in C.M.A.Nos. 1380 & 1381 of 1988 and by orders dated November 19, 1991 this Court dismissed the appeals filed by the Employees State Insurance Corporation. In that case certain persons were appointed as trainees under the appellant- establishment and therefore they resisted the demand of the E.S.I. Corporation for payment of E.S.I, contributions. A case was filed by the Management challenging the applicability of the Act to the Trainees and the Employees Insurance Court appears to have held that they were not covered by the Employees State Insurance Act. Aggrieved by the said order the E.S.I. Corporation filed an appeal. This Court held that there was an agreement. The training that is imparted by the management shows that there was master and student relationship. It was held that the finding of the Employees Insurance Court that they do not fall under the definition of 'employee' cannot be found fault with. Under those circumstances, the appeal of the Corporation was dismissed. On the other hand, the learned counsel for the respondent- Corporation submits that there is a clear finding of the Employees' Insurance Court that these persons are being paid salary and also allowances. Further, the E.S.I, contributions were also paid as if they are covered. It is only at a later point of time the Management started objecting. Therefore, it is a case where the management has been extracting the work of regular employee under the guise of apprentices/trainees. The learned counsel also submits that since the Employee/Insurance Court has found as fact that these persons were employed on regular basis for wages, the designation of the employee becomes immaterial. Once it is found that they are employed for wages the remuneration which they receive as wages, even though it is styled as 'stipend', loses its relevancy.

7. It has to be considered whether the apprentices/trainees employed by the appellant-management are required to be covered under the Employees State Insurance Act. It is not in dispute that the establishment is covered under the Act and it has been paying the contribution in respect of the regular employees as required under the Act. But however, the dispute arises only in respect of apprentices/ trainees, said to have been engaged by the appellant - establishment. The Court below after appreciating the evidence on record found that they are employed for wages and they fall within the definition of Section 2(9) of the Act. There is a categorical finding that they are being paid basic wage and also other allowances.

8. The Employees State Insurance Act is a beneficial piece of legislation to protect the interests of the workers. Therefore, the interpretation of the provisions of the Act have to be made keeping in view the objects of the Statute. The employer cannot be allowed to circumvent the provisions of the Act in the disguise of ambiguous designations. Though the designation 'Apprentices'/Trainees gives an impression at the first blush that they are not regular employees, but if the veil is lifted and the real facts are ascertained, they are in fact found to be working as regular employees. Thus, the employer cannot be permitted to flout the Law.

9. The Judgment in C.M.A. Nos. 1380 & 1381 of 1988 stands on a different footing. There was no finding of the Employees Insurance Court that the apprentices/trainees were employed for wages. Admittedly, there was an agreement between the parties to receive a certain sum as stipend and that agreement was not conditioned by any assurance of the employer after completion, of the training period. Thus, in the facts and circumstances of that case, this Court held that there was no relationship of master and servant and it was only a relationship of master and student. In the instant case, the Court categorically, found that they were employed for wages. Therefore, we do not find any ground to interfere with the said finding, being a finding of fact. We have also perused the grounds of appeal and find that no substantial question of law is involved.

10. For the foregoing reasons, we dismiss the appeal. Accordingly, the appeal is dismissed. There shall be no order as to costs.