Before G. C. Mital, J.

EMPLOYEES STATE INSURANCE CORPORATION,—*Appellant.*

versus

T. C. VERMANI,—*Respondent.*

First Appeal from Order No. 78 of 1975.

March 22, 1984.

Employees State Insurance Act (XXXIV of 1948)—Section 2(9) as amended by Act 44 of 1966 and section 40—Definition of 'employee' amended by the amendment Act to give retrospective operation—Employees in the head office included in the said definition by the amendment Act—Corporation raising demand against employer much after the amendment —Employer Whether liable from date of demand—Corporation—Whether duty bound to inform employer that it is covered under the Act.

Held, that a reading of section 2(9) of the Employees State Insurance Act, 1948 as amended by Act 44 of 1966 would show that the definition of 'employee' was extended to such persons 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 distribuiton or sale of the products of the factory, and before this date the employees working in the head office were not included in the said definition. As such the employees working in the head office are liable to be included in the term 'employee' and the employer is liable to pay the contribution as demanded by the Act.

(Para 2)

Held, that there is no provision under the Act which enjoins a duty on the corporation to keep on informing the factory owners that they are covered by the Act. The Corporation is not adviser to the employer and in fact a duty is enjoined on the principal employer of the factory the moment it stands covered by the provisions of the Act and for that matter to deduct the employees' contributions from their pay and send the same to the Corporation alongwith the employer's contribution. If the employer fails to deduct the employees' contribution, no fault can be found with the Corporation as section 40 of the Act places its responsibility to pay the contribution on the principal employer. As

such the contribution is to be made by the employer from the date on which the factory comes under the provisions of the Act and not from the date of demand from the Corporation.

(Paras 9 & 10).

First Appeal from the order of Shri P. C. Nariala Employees State Insurance Court, Ballabgarh, District Gurgaon, dated 30th November, 1974, deciding the application with the findings that the employees of the head-office of the plaintiff-company are covered by Employee's State Insurance Act and Scheme with effect from 16th December, 1969 and the plaintiff-company is liable to contribute towards employer's special contribution and the employees' share under the said Act.

K. L. Kapur, Advocate,—*for the Appellant.*

Anand Parkash, Sr. Advocate with S. P. Jain, Advocate, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.

(1) This order will dispose of F.A.O. Nos. 78 and 83 of 1975 as these are cross appeals arising out of the same proceedings.

(2) The Employee State Insurance Corporation (here-in-after called the Corporation) created a demand in respect of contributions against M/s Kalkaji Compressor Works, Faridabad through T. C. Virmani, Works Manager, since their factory was covered by the provisions of the Employees State Insurance Act, 1948 (here-in-after referred to as the Act). The Works Manager filed a petition under section 75 of the Act to challenge the demand on the plea that the definition of employee contained in section 2(9) of the Act was amended by Act. No. 44 of 1966 with effect from 28th January, 1968 as a result of which the definition of 'employee' was extended to such persons 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, and before this date the employees working in the head office were not included and for the first time the Corporation had taken a decision in July, 1970, to include the

employees working in the head office for the purposes of submitting contributions and not earlier thereto. It was also their case that after July, 1970, the contribution with respect to certain employees of the head office was being paid under protest although the employee working in the head office had nothing to do with the factory as the factory had its administrative office in the factory precincts which was being controlled by Shri T. C. Virmani independent of the head office.

(3) The Corporation contested the matter and pleaded that the liability under the Act is not from the date of demand but it started from 28th January, 1968 when the definition of 'employee' was amended with effect from that date as a result of which all persons concerned with the sale of the products of the factory were included in the definition of "employee". Since the entire sale of the factory products was being managed by the head office, therefore, the employees working in the head office also came in the definition of "employee", and the contributions in respect of the employees of the head office were rightly demanded.

On the pleadings of the parties, the following issues were framed:—

1. Whether the present suit is maintainable? OPP
2. Whether the employees of the Head-Office of the plaintiff-factory are not covered under the E.S.I. Act? OPP (Objected to)
3. Whether the respondent is not entitled to recover the amount for the period 28th January, 1968 onwards? OPP.
4. Whether the respondent is not entitled to interest? OPP.
5. Relief.

(4) After evidence was recorded, the Employees Insurance Court by order dated 30th November, 1974, held under issue No. 1 that the petition was maintainable ; issue No. 2 was decided against the factory, and under issue No. 3 it was held that since the Corporation had created a demand on 16th December, 1969, only till that date the contributions were liable to be paid and contributions for the earlier period could not be demanded as no benefit was given to employees during the period prior to 16th December, 1969. *Hindustan Aeronautics Ltd* v. *Regional Director, Employees'*

State Insurance Corporation, (1) cited on behalf of the factory, was referred to and since no argument was advanced on issue No. 4, the application of the factory was partly allowed and the demand for the period prior to 16th December, 1969 was held to be illegal and the application of the factory pertaining to the period from 16th December, 1969 onwards was dismissed. While the Corporation filed F.A.O. No. 78 of 1975, to claim contributions from 28th January, 1968, the factory has come up in F.A.O. No. 83 of 1975 to have a decision that the employees of the head office are not to be considered while calculating the contributions for any period whatsoever.

(5) Having heard the learned counsel for the parties at great length, I am of the considered view that the appeal of the Corporation deserves to succeed and the appeal of the factory has no merit whatsoever. Before I proceed to consider the rival contentions, the facts brought on the record deserve to be kept in view. Shri T. C. Virmani, Works Manager, appeared as a witness for the factory whose statement is recorded at page 143 of the file. He admitted that K. G. Khosla and Co. is the head office of Kalkaji Compressors and that the balance sheet of the factory was made by the head office. However, he did not know if the balance sheet of the factory and the head office was one. He further stated that the ready goods used to be sent to the head office and sometimes outside. He used to draw the monthly wages of the employees working in the factory, from the head office.

(6) K. L. Mehra of M/s K. G. Khosla and Co. appeared as P.W.5 and his statement is recorded at page 143 of the file. He admitted that 80 per cent employees of the head office are in the sales department. It is also true that there is an administrative office in the factory premises and Shri T. C. Virmani is In-charge of the administrative office as Works Manager. That administrative office sometimes deals with the purchase of material, production and maintenance of the factory and its premises. However, all sales of the products made by the factory, are made in the head office or under the instructions from the head office. The balance sheet is prepared in the head office and the monthly wages for the employees of the factory are also drawn from the head office.

(1) 1974 Labour Law Journal 115.

Once the sales of the goods produced in the factory premises are regulated in the head office, it means that the sales are made through the salesmen employed in the head office, thus the employees of the head office would also be included in the definition of 'employee' by virtue of the amendment which came into being on 28th January, 1968. On the facts, the larger point raised by Dr. Anand Parkash on behalf of the factory, that the salesmen working in the head office are not to be considered as employees for the purposes of calculating contributions, has no merit. For this view, I find support from the decisions reported in *The Associated Cement Cos. Ltd.* v. *The Regional Director, Employees' State Insurance Corporation, Bombay*, (2) *Employees' State Insurance Corporation, Hyderabad* v. *Sri Krishna Bottlers (P) Ltd.*, (3) *India Jute Company Ltd.* v. *Employees' State Insurance Corporation and another*, (4) *Hindustan Lever Limited* v. *Employees State Insurance Corporation, New Delhi and others*, (5) *Hyderabad Asbestos Cement Products Ltd.* v. *Employees Insurance Court and another*, (6) and *Royal Talkies, Hyderabad and others* v. *Employees' State Insurance Corporation*, (7).

(7) It was then argued on behalf of the Corporation that the demand for contributions is demand of tax and not fee and principles of *quid pro quo* are not applicable. In this behalf, reliance is placed on *The Associated Cement Cos.'s case* supra, *M/s Gwalior Reyons Silk Manufacturing Co.* v. *E.S.I. Corporation*, (8) and *Sakthi Pipes Ltd.* v. *Regional Director, Employees State Insurance Corporation, Madras*, (9). The Act is a social beneficiary legislation for the employees to ensure their well being and for this purpose, the contributions are collected. The contributions received by the Corporation becomes the readyfund available with it for being paid to the employees for the benefits like illness, maternity, non-employment benefits, compensation for injuries, loss of earning etc.

(2) 1981 Lab. I.C. 1409.
(3) (1977)50 F.J.R. 347 (Andhra Pradesh.)
(4) (1977)50 F.J.R. 449 (Calcutta).
(5) (1972)42 F.J.R. 263 (Delhi).
(6) A.I.R. 1978 S.C. 356.
(7) A.I.R. 1978 S.C. 1478.
(8) 1975 Lab. I.C. 1395 (Kerala).
(9) 1978 Lab. I.C. 410 (Madras).

The moment a claim is made by an employee who is entitled to the benefits under the Act, he will have to be paid. On these facts, the principles of *quid pro quo* cannot even remotely be attracted.

(8) I would like to go a step further and say that even if the principle of *quid pro quo* is applied to the case in hand, the collection of contributions is strictly for the purpose of extending benefits to all the employees who come within the ambit of the Act. Therefore, the contributions are payable to meet the expenses for the claims or benefits to which the employees may be entitled under the Act. In this manner, the payment of contributions has direct relation to the services to be rendered to the employees. Therefore, viewing the case from any angle, the contributions would be payable the moment an employee comes within the ambit of the Act irrespective of the fact whether the Corporation makes the demand immediately or after sometime.

(9) I had put to Dr. Anand Parkash that assume a salesman working in the head office had died after 28th January, 1968 and before December, 1969, when the demand was created by the Corporation, could the heirs of such an employee not claim compensation under the Act from the Corporation? The learned counsel was unable to give any reply to this. A reading of the Act clearly shows that the salesman working in the head office or the branch offices where the sales or the factory products are conducted, such salesman would fall within the definition of the 'employees' and would be entitled to the benefits under the Act with corresponding duty/liability to pay the contributions.

(10) Moreover, there is no provision under the Act which enjoin a duty on the Corporation to keep on informing the factory owners that they are covered by the Act. The Corporation is not their advisor. On the contrary, the duty is enjoined on the principal employer of the factory the moment it stands covered by the provisions of the Act and for that matter to deduct the employees' contribution from their pay and send the same to the Corporation along with employer's contributions. If the employer fails to deduct the employees' contribution, no fault can be found with the Corporation. Section 40 of the Act places the responsibility to pay the contributions on the principal employer. For

the aforesaid view, I find support from *Southern Roadways (Private) Ltd.* v. *Employees' State Insurance Corporation,* (10) and *Prem Sukh and others* v. *Manager, Employees' State Insurance Corporation and others,* (11). Therefore, the Court below was clearly in error in coming to the conclusion that the Corporation was not entitled to demand contributions prior to December, 1969, as the benefit was not extended to the employees before that date.

(11) For the reasons recorded above, F.A.O. No. 78 of 1975 is allowed and the order of the Court below is modified and it is held that the entire demand of contributions made by the Corporation was justified and the application filed by the factory under section 75 of the Act had no merit. As a consequence, F.A.O. No. 83 of 1975 and the application filed by the factory under section 75 of the Act, are dismissed. The Corporation shall have costs in both these appeals which are quantified at Rs. 500.

H. S. B.

Before S. S. Kang, J.

MANOHAR LAL—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4498 *of* 1981

March 27, 1984

Punjab Civil Services (Premature Retirement) Rules, 1975—*Rules* 3 *to* 5—*Government employee attaining age of* 55 *years seeking premature retirement—Such employee depositing three months salary and also giving notice for that purpose—Such employee—Whether can be said to have automatically retired on the expiry of period of notice—Discretion to refuse to sanction the retirement—Whether vests in the Government.*

Held, that a reading of Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 would show that any Government employee may, after giving three months' notice in writing to

(10) (1973)44 F.J.R. 447 (A.P).
(11) 1981 Lab. I.C. 939 (Raj).