

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8377 OF 2011

EMPLOYEES STATE INSURANCE CORPORATION ... Appellant(s)

Versus

M/S.HINDUSTAN MILKFOOD MANUFACTURERS LTD. AND ... Respondent(s)  
ORS.

O R D E R

Heard Mr. A.K.Ganguli, learned senior counsel for  
the respondent No. 1

The High Court by its order dated 08.03.2006 in FAO  
No. 236 of 1982 reversed the order dated 04.03.1982  
passed by the Employees Insurance Court, Patiala  
whereby it was held that the Atta Mohammad Ram Swarup,  
Behari Ram, Ram Dev, Deep Chand, Bansi Lal, Mohinder  
Ram, Harnam Singh, Bani Ram and Hari Singh are the  
employees of the appellant within the meaning of Section  
2(9) of the E.S.I. Act and challenge to the notice dated  
18.09.1976 made by the appellant has been repelled. The  
ESI Court has considered the evidence in detail. It has  
considered evidence of several witnesses i.e. PW1 to PW8

particularly the Executive Officer of the appellant. His statement clearly indicate that the payment was made by the employer. However, the workman were employed through a contractor. As per the work done, the bill submitted by the employees were paid by the employer. Photo state copies of the bills have been submitted. It was also admitted that all these persons have worked during the year 1972-1983 and they worked for several years on contract basis. The ESI inspector has also given a report that they were found working at the time of inspection made on 14/15 January, 1994 under the direct supervision of the employer. And they worked in supervising employer. The Inspector ESI had also been examined in the case. His statement has also been considered by the ESI court. He has also stated as found by the ESI Court that the employer had made payment for the work which was done. He stated that Atta Mohammad and Ram Swarup were washing clothes at the time of inspection on the Bank of company in the premises of the factory. However, the High Court without examining the evidence and the reasoning employed by the ESI Court in a perfunctory manner reversed the findings of the ESI Court which could not

have been done within ken of the appellate jurisdiction. In our view, a reading of the entire order of the High Court and that of the ESI Court make it clear that the proper reasons have not been employed by the High Court.

It was submitted by learned counsel appearing for the respondent that the employees did not fall within the definition of Section 2(9) of the Act as payment was made on piece rate basis. In our opinion as the work had been done for more than 10 years. The mode of such payment is covered under definition of wages in Section 2(22) of the Act. The findings recorded by the High Court are clearly perverse and cannot be said to be in accordance with law.

The impugned order of the High Court is set-aside and the appeal is, accordingly, allowed. There shall be no order as to costs.

.....J.  
(ARUN MISHRA)

.....J.  
(MOHAN M.SHANTANAGODAR)

New Delhi,  
Dated: 25<sup>th</sup> July, 2017.

ITEM NO.110

COURT NO.9

SECTION IV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8377/2011

E.S.I. CORPORATION

Appellant(s)

VERSUS

M/S HINDUSTAN MILKFOOD MANUFACTURERS LTD &amp; ORS.

Respondent(s)

Date : 25-07-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)      Mr. Mahesh Srivastava, Adv.  
                                 Mr. Vaibhav Manu Srivastava, Adv.  
                                 Ms. Sringarika Priyadarshni, Adv.  
                                 Mr. P. N. Puri, AOR

For Respondent(s)    Mr. A.K.Ganguli, Sr. Adv.  
                                 Mr. Dinesh Madan, Adv.  
                                 Ms. Meera Mathur, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(SHASHI SAREEN)  
AR CUM PS

(TAPAN KUMAR CHAKRABORTY)  
BRANCH OFFICER

(Signed order is placed on the file)