

[MANU/DE/0688/1998](#)

Equivalent Citation: 1998IVAD(Delhi)83, 73(1998)DLT451, 1998(45)DRJ630

IN THE HIGH COURT OF DELHI

Writ Petition (C) No. 2526 of 1995

Decided On: 06.05.1998

Appellants: **Common Cause**

Vs.

Respondent: **Union of India & Anr.**

Hon'ble

[Y.K. Sabharwal](#) and [C.K. Mahajan](#), JJ.

Judges/Coram:

Counsels:

For Appellant/Petitioner/plaintiff: [Director](#), Mr. H.D.Shourie, Adv

For Respondents/Defendant: [Mr. K.N. Kataria](#), Sr. Adv. and [Mr. N.S. Bajwa](#), Adv.

Subject: Labour and Industrial

Catch Words

Mentioned IN

Acts/Rules/Orders:

Constitution of India - Article 226; Employees State Insurance Act, 1948 - Section 56; Employees State Insurance (Central) Rules, 1950 - Rule 61

Case

Note:

Employees State Insurance Act, 1948 - Section 2(9), 2(14) & 56--Medical benefit to retired persons--Entitlement of--The provisions of Act entitled superannuated employees to receive medical benefit as an insured person subject to self contribution as provided Under Rule 61 of the Rules--An insured person is entitled to benefit only for five years immediately preceding superannuation and not thereafter.

Held:

A worker/employee is not employed for wages after retirement and is thus not covered by the definition of 'employee'. Medical benefit is admissible only to the insured person and not to an employee. 'Employee and insured person' have been separately defined. A person must be an 'insured person' five years immediately preceding superannuation to claim benefit on superannuation. The issue raised is only in respect of one benefit out of the five benefits admissible under the Act. 'insured persons' whose wages exceed the wage limit or who leave employment or do not contribute for the required number of days in a contribution period, are not entitled to medical benefits. The ineligible persons are not entitled to take benefit of Section 56 read with Rule 61. Once the Act has been extended to a factor/establishment under Section 1(3) or Section 1(5) all employees who fulfill the requirements as laid down under Section 2(9) of the Act read with Rule 50 of the Rules, i.e. drawing wages not exceeding Rs. 3,000/- per month, are covered under the Act. The amendment envisages extension of medical benefits to 'insured persons' and their spouses and not to employees or persons as such. The amendment Act of 1989 extended benefit to 'insured persons' who attain the age of superannuation, subject to payment of contribution and such other conditions as may be prescribed under the Act. The object is to maintain continuity in treatment to 'insured persons' who are eligible for medical benefit at the time of superannuation.

The six employees of the M/s. Eicher Tractors Limited, whose case is being espoused by the petitioner, ceased to be insured persons between 6-15 years from the date of their superannuation. They are, Therefore, not eligible for medical benefits after their retirement as they ceased to be 'insured persons' and were only employees. The petitioner seeks to stretch the interpretation of Rule of 61 to include ineligible persons for entitlement of the medical benefits to superannuated persons. Section 56 of the Act and Rule 61 of the Rules lay stress on the words "insured persons" on the appointed date.

ORDER

C.K. Mahajan, J.

1. The present petition is limited to the issue as to whether the persons who were covered under the Employees State Insurance Act, 1948 (for short 'the Act') and who superannuated from insurable employment in which they were engaged till superannuation, would be entitled to medical benefits under the Act and the Employees State Insurance (Central) Rules, 1950 (for short 'the Rules').

2. The petition has been filed by **Common Cause**, a registered Society, through its Director, Mr. H.D. Shourie, espousing the case of six retired employees of Eicher Tractors and their spouses for grant of medical benefits. M/s Eicher Tractors Limited in 1995 made a representation to respondent No.2, the Employees State Insurance Corporation, through its Director General, requesting them to grant medical benefits to six of its retired employees and their spouses. The matter was considered by respondent No.2, who rejected the claim of the six retired employees to medical benefits under the Act on the ground that they were not insured persons at the time of their retirement within the meaning of the Act. The respondent No.2 contended that the persons had retired with wages exceeding Rs.3,000/- per month and that they were not insured within the meaning of the Act and were not entitled to any medical benefits after superannuation.

3. The main contention of the petitioner is that from a reading of the relevant provisions of the Act, in particular Section 56 and of the Act Rule 61 of the Rules framed under the Act, it is evident that all retired employees are entitled to medical benefits even after superannuation. The said contention was refuted by respondent No.2 and it was contended that medical benefits are admissible to a superannuated insured person and his spouse if he was otherwise eligible and entitled to medical benefits before their retirement and was not beyond the wage limit for coverage under the Act. The definition of 'insured person and his family' in Section 2(14) of the Act excludes the extension of benefits to a person who is not an 'insured person'. Those insured persons who have crossed the prescribed wage limit before superannuation even though they fulfill all other criteria, are not entitled to the grant of medical benefits under the Act and the Rules.

4. To fully appreciate the present questions and the issue involved in the present petition, certain provisions of the Act and the rules may be reproduced as under :-

Section 2 sub-section (9) of the Act reads as under:

"Section 2(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 Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment, but does not include - (a) any member of the Indian Naval, Military or Air Forces' or (b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month;

5. Provided that an employee whose wages excluding remuneration for overtime work exceed such wages as may be prescribed by the Central Government a month at any time after and not before the beginning of the contribution period shall continue to be an employee until the end of that period.

Section [2\(14\)](#) of the Act reads as under:

"[2\(14\)](#) - "insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act;

Section [56](#) of the Act lays down conditions for eligibility to make medical benefits available to the 'insured persons and his family members'. The said section reads as under :

"Section [56](#). Medical benefit- (1) An insured person or (where such medical benefit is extended to his family), a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of outpatient treatment and attendance in a hospital or dispensary, clinic or other institution or by visit to the home of the insured person or treatment as in-patient in a hospital or other institution.

(3) A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or in respect of such disablement benefit as does not disentitle him to medical benefit under the regulations.

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations;

Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement;

Provided also that an insured person, who has attained the age of superannuation, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government;

Explanation - In this section, "superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment.

5. The existing medical benefits available to the 'insured person and his family persons, were extended to other categories of persons vide amendment in the Employees State Insurance Act in the year 1989 which was given effect to from 1st February, 1991. The said amendment is reproduced hereinbelow:

"(a) An insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement.

(b) An insured person who had attained the age of superannuation, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government.

6. By way of the aforesaid amendment medical benefit was extended to an 'insured person' on attaining the age of superannuation and to his spouse subject to payment of contribution and such other conditions as may be prescribed by the Central Government. The object was to maintain continuity in the treatment to the 'insured persons' who were eligible for medical benefits at the time of their superannuation. The Central Government prescribed certain conditions for eligibility of this benefit as laid down in Rule 61.

7. Rule 61 of the Rules laid down the criteria for being eligible for an insured person and his spouse for medical benefits on attaining the age of superannuation.

Rule 61 reads as under:

"RULE-61. Medical benefits to retired insured persons. - An insured person who leaves the insurable employment on attaining the age of superannuation after being insured for not less than 5 years shall be eligible to receive medical benefits for himself and his spouse at the scale prescribed under the Act and the Regulations made there under subject to:-

(i) The production of proof of his superannuation and having been in insurable employment for a minimum of five years to the satisfaction of such officer as may be authorised by the Corporation, and

ii) The payment of contribution at the rate of ten rupees per month in lump-sum for one year at a time in advance to the concerned officer of the Corporation in the manner prescribed by it.

8. Once the Act has been extended to any factory/establishment under Section [1\(3\)](#) or Section [1\(5\)](#) all employees who fulfill the requirements laid down under Section [2\(9\)](#) of the Act read with Rule 50 of the Rules, that is, drawing wages not exceeding Rs.3,000/- per month, are covered under the Act. It may be mentioned here that wage limit for coverage under the Act has been increased from time to time keeping in view the increase in wage due to various factors including inflation and for the purposes of the present petition the amendment in 1992 increasing wage limit to Rs.3,000/- is relevant.

9. According to the petitioner Section [56](#) of the Act read with Rule 61 of the Rules framed under the Act entitles the superannuated 'insured persons and their spouses' to receive medical benefits. According to him the law contemplates extension of such benefits to a 'retired insured person'. It is nowhere stated in Rule 61 of the Rules that the person retired should have made contribution towards insurance for a period of five years immediately preceding his superannuation. The 'retired insured person' was required to satisfy the following criteria in order to get medical benefits.

(i) The person should be an 'insured person' within the meaning of the Act at some stage of his employment.

(ii) The person should have left insurable employment on attaining age of superannuation.

(iii) The person should have superannuated after having been in insurable employment for not less than five years.

(iv) The person must contribute Rs.10/- per month to the concerned office of the Corporation in the manner provided therefore.

(v) The person must provide proof of his superannuation and proof of having been in insurable employment for a minimum period of five years to the satisfaction of the authorised officer.

10. According to the petitioner the aforesaid conditions were fulfilled by the six former employees of M/s Eicher Tractors Limited and they were thus entitled to the medical benefits available to them under Rule 61.

11. It is also contended by the petitioner that the retired persons are required to make contributions towards insurance for a period of five years before superannuation and if the respondents contend otherwise, their interpretation is unwarranted in view of the language of Rule 61 of the Rules as the said Rule would be rendered nugatory. In the alternative, the petitioner submitted that Rule 61, as framed, would be vocative of the provisions, spirit and intent of the Act if such interpretation was to be accepted.

11. It is the case of the respondents that medical benefits are available to 'insured person and his family members' under Section [56](#) of the Act. The existing medical

benefits available to the 'insured person and his family members' were extended to other categories of persons by amendment of the Act in 1989 with effect from 1st February, 1991. In view of the amendment, the medical benefits were available to insured persons even after superannuation. Therefore, a worker who is not employed for wages after retirement is not covered under the definition of "employee" as given in the Act. The medical benefits are admissible only to the 'insured person' and not to the employee. Thus the Legislature in its wisdom defined the 'insured person' and in order to receive benefit under the ESI Scheme, a person must be an 'insured person' and not merely an employee. It was further submitted that Rule 61 of the Rules, lays down the criteria for being eligible for an 'insured person and his spouse' for medical benefits on attaining the age of superannuation. Therefore, the six persons claiming medical benefits by way of the present writ petition cease to be 'insured persons' and were thus not entitled to any benefits in terms of Rule 61 as they had not been in insurable employment for a period of five years immediately before the superannuation.

12. We have heard the learned counsel for the parties at length and have given due consideration to the various provisions of the Act and the Rules relating to the grant of medical benefits to persons who have superannuated. Section [56](#) entitles a person who has attained the age of superannuation and his spouse to receive medical benefits subject to payment of contributions and such other conditions as may be prescribed by the Central Government. 'Superannuation' in relation to an insured person means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment. Therefore, on the date of superannuation the basic condition for eligibility for receiving medical benefit was that the person should be an 'insured person'. The definition of 'insured person' as provided in Section [2\(14\)](#) of the Act means a person who was an employee in respect of whom contributions are or were payable under the Act and who by reason thereof is entitled to any of the benefits provided by the Act. Therefore, on the date of superannuation the medical benefit was admissible only to 'insured person' and not to an employee. The basic difference is that an employee becomes an 'insured person' only if he pays contribution. The ESI Scheme is a self-contributory scheme and all employees contribute for availing the benefits.

13. The Employees State Insurance Act was enacted in 1948 to provide certain benefits to the employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. The scheme is compulsory and contributory in nature. Though the enactment was a Central legislation yet the Central Government do not contribute to the Scheme and the same is mainly financed from contributions of the employees and employer. A contribution is made by the State Government.

14. An 'insured person' or where such medical benefit is extended to his family, a member of his family, whose condition requires medical treatment and attendance, shall be entitled to receive medical benefits for a period of three months provided that where such a person continues for three months or more to be an employee of a factory or establishment to which the Act applies, he shall be entitled to medical benefits till the beginning of the corresponding benefit period. A person in respect of whom contributions have been paid in a contribution period for not less than half of the number of days in the said contribution period, shall be entitled to medical benefits

till the end of the corresponding period. An 'insured person' whose title to medical benefit has ceased, shall again be entitled to medical benefit from the date of his re-employment as an employee under the Act by a factory or establishment to which the Act applies if he produces a certificate from the employer in the form which may be specified by the Directorate General for that purpose. Such an 'insured person' shall unless he is already covered, be entitled to medical benefits till the commencement of the benefit period corresponding to the contribution period on which he is re-employed. The scheme for grant of medical benefits cannot be applied to persons on their superannuation unless they fall within the ambit of Rule 61 of the ESI Rules. The ESI Scheme is a self-contributory scheme and all employees contribute for availing of the benefits. Rule 2 (1-C) and Rule 2(2-A) of the Rules read as under.

"2(1-C) - Benefit period: means the period not exceeding six consecutive months corresponding to the contribution period, as may be specified in the regulations.

2.(2-A). "contribution period" means the period not exceeding six consecutive months, as may be specified in the regulations.

15. On a reading of the various provisions of the Act and the Rules and in particular Section [56](#) of the Act and Rule 61 of the Rules, we are unable to persuade ourselves to agree with the submissions made by the petitioner. It may be noticed that those persons who are below the age of superannuation and who are working and contributing to the scheme are disentitled to medical benefits if their wages exceed the wage limit or they leave the employment or if they do not contribute for the required number of days in the contribution period. Therefore, for the purposes of 'entitlement under Rule 61 to 'superannuated insured persons it is imperative that they should have been 'insured persons' for not less than five years immediately preceding superannuation to entitle them to benefit under Section [56](#) of the Act and Rule 61 of the Rules. Only such persons are eligible to receive medical benefits on attaining the age of superannuation who were 'insured persons' for five years immediately preceding superannuation subject to payment of contribution at a fixed rate for one time in a year in advance. At the time of superannuation, the 'insured person' ought to have been entitled to any of the benefits provided by this Act including medical benefit. This would ensure continuity. We are unable to subscribe to the contention of the petitioner that a person who remained an 'insured person' at some stage of the employment is entitled to such benefit under Rule 61. The six employees of the M/s Eicher Tractors Limited, whose case is being espoused by the petitioner, ceased to be 'insured persons between 6-15 years from the date of their superannuation. They are, Therefore, not eligible for medical benefits after their retirement as they ceased to be 'insured persons' and were only employees. The petitioner seeks to stretch the interpretation of Rule 61 to include ineligible persons for entitlement of the medical benefits to superannuated persons. Section [56](#) of the Act and Rule 61 of the Rules lay stress on the words "insured persons" on the appointed date.

16. A worker/employee is not employed for wages after retirement and is thus not covered by the definition of 'employee'. Medical benefit is admissible only to the insured person and not to an employee. 'Employee and insured person' have been separately defined. A person must be an 'insured person' five years immediately preceding superannuation to claim benefit on superannuation. The issue raised is only in respect of one benefit out of the five benefits admissible under the Act. 'Insured

persons' whose wages exceed the wage limit or who leave employment or do not contribute for the required number of days in a contribution period, are not entitled to medical benefits. The ineligible persons are not entitled to take benefit of Section [56](#) read with Rule 61. Once the Act has been extended to a factory/establishment under Section [1\(3\)](#) or Section [1\(5\)](#) all employees who fulfill the requirements as laid down under Section [2\(9\)](#) of the Act read with Rule 50 of the Rules, i.e. drawing wages not exceeding Rs.3,000/- per month, are covered under the Act. The amendment envisages extension of medical benefits to 'insured persons' and their spouses and not to employees or persons as such. The amendment Act of 1989 extended benefit to 'insured persons' who attain the age of superannuation, subject to payment of contribution and such other conditions as may be prescribed under the Act. The object is to maintain continuity in treatment to 'insured persons' who are eligible for medical benefit at the time of superannuation.

The contentions of the petitioner are thus without any force and are rejected.

For the reasons aforesaid, the petition is dismissed with no order as to costs.