

M/s Harihar Polyfibres

Vs

Regional Director, Esi Corporation

Special Leave Petition (Civil) No. 9795 of 1983

(O. Chinnappa Reddy, A. N. Sen JJ)

04.09.1984

ORDER

O. CHINNAPPA REDDY, J. (on behalf of himself and A. N. Sen, J.) -

1. The question for consideration in this petition for special leave to appeal under Article 136 of the Constitution of India is whether the expression 'wages', defined by Section 2(22) of the Employees' State Insurance Act, includes 'House Rent Allowance', 'Night Shift Allowance' paid to those employees who are obliged to work in the night shift and the 'Heat, Gas and Dust Allowance' and 'Incentive Allowance' paid by an employer to his employees. Section 2(22) defines 'wages' as meaning :

all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include - (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act; (b) any travelling allowance or the value of any travelling concession; (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (d) any gratuity payable on discharge.

2. The Employees' State Insurance Act is a welfare legislation and the definition of 'wages' is designedly wide. Any ambiguous expression is, of course, bound to receive a beneficent construction at our hands too. Now, under the definition, first, whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, express or implied is wages; thus if remuneration is paid in terms of the original contract of employment or in terms of a settlement arrived at between the employer and the employees which by necessary implication becomes part of the contract of employment it is wages; second, whatever payment is made to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off is wages; and third, other additional remuneration, if any, paid at intervals not exceeding two months is also wages; this is unqualified by any requirement that it should be pursuant to any term of the contract of employment, express or implied. However, 'wages' does not include any contribution paid by the employer to any pension fund or provident fund, or under the Act, any travelling allowance or the value of any travelling concession, any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment and any gratuity payable on discharge. Therefore wages as defined includes remuneration paid or payable under terms of the contract of employment, express or implied but further extends to other additional remuneration, if

any, paid at intervals not exceeding two months, though out-side the terms of employment. Thus remuneration paid under the terms of the contract of the employment (express or implied) or otherwise if paid at intervals not exceeding two months is wages. The interposition of the clause "and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off" between first clause, "all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, was fulfilled" and the third clause, "other additional remuneration, if any, paid at intervals not exceeding two months," makes it abundantly clear that while 'remuneration' under the first clause has to be under a contract of employment, express or implied, 'remuneration' under the third clause need not be under the contract of employment but may be any 'additional remuneration' outside the contract of employment. So, there appears to our mind no reasons to exclude 'House Rent Allowance', 'Night Shift Allowance', 'Incentive Allowance' and 'Heat, Gas and Dust Allowance' from the definition of 'wages'. A Full Bench of the Karnataka High Court in *N.G.E.F. Ltd. v. Deputy Regional Director, E.S.I.C.* (1980 Lab IC 431 : ILR (1979) 1 Kant 463) considering the question at some length held that the amount paid by way of incentive under the scheme of settlement entered into between the Management and its workmen was wages within the meaning of Section 2(22) of the Employees' State Insurance Act. It was observed by the Full Bench of the Karnataka High Court as follows :

It is true that word 'remuneration' is found both in the first and second parts of the definition. But the condition attached to such payment in the first part cannot legitimately be extended to the second part. The other 'additional remuneration' referred to in the second part of the definition is only qualified by the condition attached thereto (that is, paid at intervals not exceeding two months). That was also the view taken by a Full Bench of the Andhra Pradesh High Court in *E.S.I. Corpn., Hyderabad v. A.P. Paper Mills Ltd.* (1978 Lab IC 19 : AIR 1978 AP 18 : 1977 Andh LT 509 : (1978) 1 LLJ 469) and also the Bombay High Court in *Mahalaxmi Glass Works Pvt. Ltd. v. E.S.I.* (1976 Lab IC 514 : (1976) 2 LLJ 238 : 49 FJR 301) But this aspect of the matter has been completely overlooked by this Court in *Kirloskar case* (*Regional Director of E.S.I. Corpn. v. Mysore Kirloskar Ltd.*, 1974 Lab IC 1083 : (1974) 2 LLJ 396 : (1974 1 Kand LJ 358).

3. In *E.S.I. Corporation, Hyderabad v. A.P. Paper Mills Ltd.* (1978 Lab IC 19 : AIR 1978 AP 18 : 1977 Andh LT 509 : (1978) 1 LLJ 469), a Full Bench (Divan, C.J., Raghuvir and Gangadhara Rao, JJ.) of the Andhra Pradesh High Court held that incentive bonus paid to an employee (which the Court, on the facts of the case, found was not remuneration in terms of the contract of employment, express or implied) fell within the third part of the definition of 'wages' that is "additional remuneration if any, paid at intervals not exceeding two months". The Full Bench said :

The word 'other' appearing at the commencement of the third part of the definition of wages under Section 2(22) indicates that it must be remuneration or additional remuneration other than the remuneration which is referred to in the earlier part of the definition viz., all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and incentive bonus in the present scheme is certainly additional remuneration. It must be emphasised at this stage that under the third part of the definition of 'wages' it is actual factum of payment which counts because the word used is 'paid' as distinguished from 'paid' or payable. The moment you get any additional remuneration other than the remuneration payable under the contract of employment and if this additional remuneration is paid at intervals not exceeding two months, it

becomes wages by virtue of the third part of the definition of 'wages'.

4. The learned Judge of the Full Bench referred to the judgment of a learned Single Judge of the Calcutta High Court in *Bengal Potteries Ltd. v. Regional Director, W. Bengal Region, E.S.I. Corporation* (1973 Lab IC 1328 (Cal)), where the learned Judges had held that "the additional remuneration sought to be included by the expression 'and includes other additional remuneration' must be remuneration which thought no part of the wages could be paid as part of the terms of contract of employment". The Full Bench did not agree with the view expressed by the learned Single Judge and said :

..... we are unable to agree with this part of his reasoning and for the reason which we have set out hereinabove we disagree with this part of his judgment in paragraph (3).

5. We express our respectful agreement with what has been said by the Full Bench of the Andhra Pradesh High Court in the above extracted passage and their dissent from the view expressed by the learned Single Judge of the Calcutta High Court. The Full Bench further held that 'House Rent Allowance' paid by an employer to his workmen would constitute wage within the meaning of Section 2(22) of the Act.

6. Our attention was also invited to the case of *Braithwaite and Co. (India) Ltd. v. E.S.I. Corporation* ((1968) 1 SCR 771 : AIR 1968 SC 413 : (1968) 1 LLJ 550 : 33 FJR 247) (V. Bhargava and C. A. Vaidialingam, JJ.). The case arose prior to the amendment of the Employees' State Insurance Act in 1966 when the explanation to Section 41 was bodily lifted from Section 41 into the definition of 'wages' in Section 2(22). The case related to the payment of an ex gratia reward styled as an 'Inam' (a bounty) which was admittedly not claimed to be "additional remuneration, if any, paid at intervals not exceeding two months" but claimed to be "remuneration paid or payable to in cash to an employee if the terms of the contract of employment, express or implied was fulfilled" which the Court found it was not. The case has been sufficiently explained by the Full Bench of the Andhra Pradesh High Court in *E.S.I. Corpn., Hyderabad v. A.P. Paper Mulls Ltd.* (1978 Lab IC 19 : AIR 1978 AP 18 : 1977 Andh LT 509 : (1978) 1 LLJ 469) and by the Full Bench of the Karnataka High Court in *N.G.E.F. Ltd. v. Deputy Regional Director, E.S.I.C., Bangalore* (1980 Lab IC 431 : ILR (1979) 1 Kant 463). We do not think that it is necessary to say anything further in this matter. In this view, the special leave petition is dismissed.

AMARENDRA NATH SEN, J. (Supplementing) -

I have read the judgment of my learned brother O. Chinnappa Reddy, J.

8. I entirely agree that on true interpretation of the word 'wages' defined in Section 2(22) of the Employees' State Insurance Act, 'wages' must necessarily include 'House Rent Allowance, Night Shift Allowance, Heat, Gas and Dust Allowance and Incentive Allowance'.

9. The definition of 'wages' has been set out in the judgment of my learned brother. The inclusive part and the exclusive portion in the definition clearly indicate, to my mind, that the expression 'wages' has been given a very wide meaning. The inclusive part of the definition read with exclusive part in the definition clearly shows, to my mind, that the inclusive portion is not intended to be limited only to the items mentioned therein. Taking into consideration the excluding part in the definition and reading the definition as a whole the inclusive part, to my mind, is only illustrative

and tends to express the wide meaning and import of the word 'wages' used in the Employees' State Insurance Act.

10. The Employees' State Insurance Act is a piece of social welfare legislation enacted for the benefit of the employees. The Act has to be necessarily so construed as will serve its purpose and objects.

11. I entirely agree with my learned brother that on a proper interpretation of the term 'wages' the legislative intent is made manifestly clear that the term 'wages' as used in the Act will include House Rent Allowance, Night Shift Allowance, Heat, Gas and Dust Allowance and Incentive Allowance. The definition, to my mind, on its plain reading is clear and unambiguous. Even if any ambiguity could have been suggested, the expression must be given a liberal interpretation beneficial to the interests of the employees for whose benefit the Employees' State Insurance Act has been passed.

12. All other aspects including the various decisions of the High Court on this question have been considered by my learned brother in his judgment. I entirely agree with the view of my learned brother and I have nothing more to add.

13. With these observations I agree with my learned brother that this special leave petition has to be dismissed.

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