Regional Director, Employees' State Insurance Corporation and Another

Vs

Bata Shoe Company (P) Ltd.

Civil Appeal No. 741-42 of 1978

(R. S. Pathak, A. P. Sen JJ)

11.10.1985

JUDGMENT

PATHAK J. -

1. These appeals by special leave are directed against the common judgment and order of the Patna High Court dismissing two appeals filed by the Regional Director, Employees' State Insurance Corporation on the question whether the respondent is liable to pay the dispute bonus to its workmen.

2. The respondent, Bata Shoe Company (P) Ltd., has a branch factory at Digha Ghat and another at Mokamah in the State of Bihar. At the Digha Ghat branch, the respondent entered into a settlement with its workmen on May 6, 1947, in which it was agreed that production bonus payable to the workmen would remain unaltered but employees earning less than Rs. 200 would get an extra bonus called "good attendance bonus" at 5% of their yearly salary provide they completed active service for 265 days annually inclusive of Saturdays. It was stipulated that attendance bonus would be calculated in the same way as a production bonus. On November 28, 1951, there was an agreement by which it was agreed that "the system of attendance bonus of the year 1952 will be discontinued and the ex gratia bonus percentage will be increased by 5%, i.e. instead of the 10% it will be 15% to all employees". It was also agreed that corresponding change would made in the Standing Orders and Rules in order to incorporate these changes. Later, another settlement was recorded, this time before the Chairmen, Industrial Tribunal, Bihar, in a pending Reference if 1955 where it was mentioned that the respondent has agreed to increase the general bonus, effective from the first quarter of 1957, from 15% to 16%. Thereafter on July 27, 1961 there was another settlement which provided :

> In view of the overall satisfactory settlement on all the outstanding points of the Union and of those points raised by the management, as a gesture of the goodwill the management declared that with effect from third quarter of 1961 the general bonus will be increased from 16 1/2% to 17 1/2%. The workmen representative appreciate this gesture of the management and expressed satisfaction on behalf of the workmen on the increase of General Bonus.

This was followed by a further settlement dated January 9, 1963 arrived at in the course of conciliation proceedings before the Conciliation Officer-cum-Deputy Labour Commissioner, Bihar. It provided that :

> Bonus : The rate of the payment of bonus, effective from forth quarter of 1962 will

> stand revised at 19% in place of 17 1/2% as at present. The payment of the bonus will be made one month after end of the each quarter at the rate of 19% of the total salary and/or wages paid to each workmen and employee during the quarter immediately preceding (such salary of wages are exclusive of any other special allowance or rewards granted to him during such period). Such bonus will be payable only to those who have completed six months' approved service ending on the last day of the quarter; and to those who have completed less than six months' approved service on the last days of the quarter, the bonus will be payable at the rate of 19 1/2% of their total salary or wages as aforesaid. The bonus will available only to those who are in the employ of the company on the last day of the quarter and who have given regular and approved service during the quarter to which the payment of bonus is available.

The last document recording a settlement is dated July 17, 1963, and pursuant to it the bonus clause was dated form the Standing Orders and Rules.

3. The facts relating to the respondent's Mokamah factory are substantially similar, expert that the bonus scheme was not incorporated at any time in the Standing Rule and Orders.

4. The respondent company at its two factories, Digha and Mokamah, was called upon from time to time by the Regional Director, Employees' State Insurance Corporation to make the requisite contribution to the Employees' State Insurance Fund. At first, the management of the two factories acknowledge their liability to deposit the amounts as part of the contract of employment, but subsequently realising, as they allege, that they were not liable in law to make any such contribution under the Employees' State Insurance Act, 1948, they decline to make such payment. Apprehending coercive methods of recovery on the part of the appellant, the management of two factories applied under the clause (g) of sub-section (1) of Section 75 of the Act for a decision by the Employees' Insurance Court on the question of their liability. The contention of the respondent was the sum payable or paid anyway of bonus to the employees was not covered by definition of the term 'wages' in sub section (22) of Section 2 of the Act and, therefore, the respondent was not liable to make any contribution. The Employees' State Insurance Court accepted the contention of the respondent. Against that order the Regional Director, Employees' State Insurance Corporation, Patna preferred appeals under Section 82 of the Employees' State Insurance Act, 1948, and the appeals have been dismissed by the Patna High Court by its judgment and order dated May 2, 1975. The High Court has held that Employees' State Insurance Court was right in taking the view that the bonus in question did not from part of the 'wages' as as defined in sub-section (22) of Section 2 of the Employees' State Insurance Act, 1948.

5. The contribution payable to an employer under the Employees' State Insurance Act, 1948 is computed with reference to the wages of the employees, and in those appeals the only question is whether the bonus paid by the respondent to its employees at the Digha Ghat and the Mokamah branch factories under the settlement mentioned earlier can be regarded as 'wages' as defined by sub-section (22) of Section 2 of the Act. Sub-section (22) of Section 2 defines 'wages' as follows :

> (22) 'wages' means all remuneration paid or payable in cash or to an employee, if the terms of the contract of employment, express or implied, were fulfilled and included 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.

6. The entire argument of the appellants before the High Court was that the bonus paid or payable to the employees by the respondent was in the nature of remuneration paid in cash to the employees under the express terms of the contract of employment. In other words, the appellants relied on that part definition of 'wages' which speak of "all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express of implies, were fulfilled". Before us, the appellants rely on the same provision in the definition. They also rely on the definition which speaks of 'wages' as "other additional remuneration, if any, paid it intervals not exceeding two months ....". The remaining provision of the definition were not relied on. We are, therefore, called upon to consider whether the bonus in question satisfied the terms of either of the two kinds of remuneration mentioned above.

(7) It is plain from what has gone before the bonus paid by the respondent to its employees is in the nature of ex gratia payment or, as has been described in one of the settlements, it is paid as a gesture of good will on the part of the respondent. It is nothing else, Indeed, learned counsel for the parties were agreed before the High Court that the bonus in the question was neither in the nature of production bonus nor customary bonus nor any stationary bonus. It can not be regarded as part of the contract of employment. Although the provision relating to it were included in the treading, Orders and Rules, they were subsequently excluded from them. In our opinion, therefore, the bonus paid by the respondent to its employees under the successive settlement and agreements made between them cannot be regarded as remuneration pay or payable to the employees in fulfillment of the terms of the contract of employment.

8. The concept of the bonus has received the attention of this Court in a series of cases, and we need mention only some of them. One of the first authoritative decision rendered by this Court is Muir Mills Co. Ltd. v. Suti Mills ((1955) 1 SCR 991 : AIR 1955 SC 170 : (1955) 1 Lab LJ 1) where N. H. Bhagwati, J., speaking for the Court, analysed the concept of the bonus and described it is representing the case incentive paid in addition to wages and given conditionally on certain standards of attendance and efficiency being attained. When wages fall short of the living standard or the industry makes huge profits part of which are due to the contribution which the workmen makes in increasing production, the demand for bonus, it was said, becomes an industrial claim. The view was followed by this Court in the Sree Meenakshi Mills Ltd. v. Workmen (1958 SCR 878 : AIR 1958 SC 153 : (1958) 1 Lab LJ 239), but the two conditions, that the wages paid to the workmen fall short of living wage and that the industries should be shone to have to made profits which are partly the result of the contribution made by the workmen in increasing the production were regarded as being of cumulative significance. Then followed Standard Vacuum Refining Co. of India v. Workmen ((1961) 3 SCR 536 : AIR 1961 SC 895 : (1961) 1 Lab LJ 227), which dealt with the concept of bonus elaborately while reaffirming what had been said in the earlier two cases.

It has not been shown to us that this Court has subsequently widened the concept of bonus to include a payment made by the employer ex gratia or as an expression of goodwill towards its employees. It seems to us clear that the first category of remuneration falling within the definition of 'wages' in sub-section (22) of Section 2 of the Employees' State Insurance Act, 1948 is not satisfied by the bonus in question in these appeals.

9. The second category of remuneration defined within the expression 'wages' by sub section (22) of Section 2 of the Act speak of the other additional remuneration paid at intervals not exceeding two months. It can not be disputed that the bonus under consideration hear is not paid at intervals not exceeding two months. It is payable "one month after the end of the each quarter".

10. We have carefully perused the terms of the definition of 'wages' set forth in sub section (22) of Section 2 of the Employees' State Insurance Act, 1948, and we are satisfied that the bonus in question in these appeals does not fall under any category or class mentioned in the definition.

11. In the result, we find ourselves in argument with the High Court, and therefore we dismiss the appeals with costs.

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