Assistant Regional Director, Nagpur

Vs

Model Mills Nagpur Ltd.

Civil Appeals Nos. 760-761 of 1975

(N.D. Ojha, J.S. Verma JJ)

01.11.1990

JUDGMENT

1. The short question involved in these appeals is as to whether the amount paid to its employees by the employer towards the authorised leave which they enjoy under the provisions of Ss. 79 and 80 of the Factories Act, 1948, is or is not to be included in the total wage bill of the employer for the purposes of computing its share of special contribution under S. 73(a) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act). The dispute relates to a period prior to the amendment of the definition of the term "Wages" under S 2(22)of the Act by Act No. 44/ 66. There is no dispute that the amount paid towards the authorised leave as aforesaid was not included in the definition of the term "Wages" as it then stood. The submission which was made on behalf of the appellant before the High Court and has been' reiterated before us is that even though the definition of the term "Wages" did not include the amount paid towards the authorised leave, it became wages in view of the Explanation to Section 41 of the Act. This submission, however, did not find favour with the High Court. It has been pointed out by the High Court that the purpose of Sections 40 and 41 of the Act was to enable the employer to recover the employee's contribution from the employee by reduction from his wages and not otherwise. It has further been pointed out by the High Court that the legal fiction created by the Explanation to Section 41 was for the aforesaid purpose of Sections 40 and 41 and it could not be extended either to the definition of the term "Wages" or to the method of computation of the contribution as contemplated by Schedule 1 of the Act. Reference has also been made by the High Court to Explanation III of Para 2 of Schedule 1 which stated that except as provided by regulations, wages pay, salaries or allowances paid in respect of any period of leave or holidays other than the weekly holidays shall not be taken into account in calculating wages.

2. Having heard learned counsel for the appellant we are of the opinion that the view taken by the High Court with regard to the interpretation of the definition of the term "Wages" as it then stood as also of Ss. 40 and 41 of the Act and the provisions contained in the 1st Schedule cannot be said to be in any manner erroneous. We agree with the view expressed by the High Court in the judgment under appeal with regard to the interpretation of the aforesaid provisions of the Act and find no merit, in these appeals. Both the appeals are accordingly dismissed. There will, however, be no order as to costs.

Appeals dismissed

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