

Regional Director, Employees' State Insurance Corpn.

Vs

Popular Automobiles

(S. B. Majumdar, S. Saghir Ahmad JJ)

29.09.1997

JUDGMENT

S.B.MAJMUDAR, J.

1. Leave granted in all the cognate Special leave Petitions.

2. By consent of learned advocates of parties all these appeals were heard finally and are being disposed of by this common judgment. The Employees' State Insurance Corporation (in short 'the Corporation') functioning in the State of Kerala as well as in the State of Karnataka in the appeals concerned, have posed for our consideration the following question of law:

"Whether a suspended employee and his employer are liable to remit under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act') the requisite contributions under the said Act in connection with the subsistence allowance amounts received by the suspended employee during the period of his suspension pending domestic enquiry."

3. In the impugned judgments under appeal the High Courts of Kerala and Karnataka have taken the view that there is no such liability on the part of the suspended employee or his employer. The learned counsel for the appellant-Corporation submitted to the contrary for our consideration.

4. A few relevant facts leading to these appeals may be noted at the outset. It is not in dispute between the contesting parties that the respondents in these appeals are the employers and the suspended persons are their employees. Both of them are governed by the Act. It is also not in dispute between the parties that prior to the suspension of these employees the respondent-employers were remitting the requisite contributions under Section 39 and 40 of the Act both by way of employees' contributions and the employers' contributions to the Corporation which had insured all these employees concerned as per Section 38 of the Act in the manner provided thereunder. It is also not in dispute that even period of suspension the suspended employees were covered by the beneficial provisions of the Act and were entitled to all the benefits available to employees under Chapter V of the Act and the coverage of entire beneficial scheme provided by the Act in that Chapter from Section 46 to Section 73 was available even in cases of suspended employees who were getting only subsistence allowance as per the rules and regulations governing their conditions of service. The High Courts in the impugned judgments have taken the view that subsistence allowance paid to an employee during suspension pending domestic enquiry would not be covered by the definition of the term 'Wages' as found in sub-section (22) of Section 2 of the Act. The said definition reads as under:

"(22) 'Wages' means 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 authorized 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 traveling 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;".

5. It was held that before any payment made by the employer to the employee is covered by the said definition of 'Wages' it should be remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled. That in case of a suspended employee the terms of contract of employment would not be fulfilled as he is not actually rendering any service during the period of suspension.

6. Learned counsel appearing for the appellant-Corporation contended that the aforesaid view of the High Court is clearly erroneous in law. He submitted that the Act is a beneficial piece of legislation offering statutory insurance against employment injuries suffered by insured workmen while in service and for earning the statutory coverage of insurance the insured workmen had to contribute as laid down by the Act and simultaneously their employers had also to add their contribution to the said amount and remit the same to the Corporation to enable the Corporation to discharge its statutory obligations under the Act for the benefit of the insured employees. It was submitted that during the period of suspension the employer-employee relationship does not get snapped. The employee cannot be said to have refused to fulfill his part of the contract as he is willing to work but it is the employer who does not want him to work and instead pays him reduced amount of wages as permissible under the rules by way of subsistence allowance which in a given case beyond the requisite period may not only go up from 50% of wages to 57% but may also go up in given contingencies to a ceiling of 100% of wages. Consequently subsistence allowance squarely falls within the first part of the definition of the term 'Wages' as found in sub-section (22) of Section 2 of the Act. In support of his contention three decisions of this Court were pressed in service -Modella Woollens Ltd. Vs. Employees' State Insurance Corporation and another [1994 Supp.(3) SCC 580]; Harihar Polyfibres Vs. The Regional Director ESI Corporation [1985] 1 SCR 712; and Indian Drugs & Pharmaceuticals Ltd. Etc. Vs. Employees State Insurance Corporation Etc. [1996 (8) SCALE 688]. The first judgment refers to production bonus. The second refers, amongst others, to incentive bonus while the third one refers to overtime wages. All these additional monetary benefits were held to be covered by the inclusive definition of the term 'wages' as found in sub-section (22) of Section 2 of the Act. It was, therefore, contended that there is no reason why subsistence allowance which is a reduced scale of wages payable to the suspended employees cannot also form part and parcel of the term 'wages' as defined in the Act.

7. Learned counsel for the respondent-employers on the other hand submitted, placing reliance on a decision of a Bench of two learned Judges of this Court in the case of Assistant Regional Director, Nagpur Vs. Model Mills Nagpur Ltd. [1993 Supp.(1) SCC 615], that prior to the amendment of the

definition of the term 'wages' in the Act even payment for any leave period was not treated as wages. He also placed reliance on two decisions of the Bombay High Court in the case of Ganpatlal Mulchandji Joshi Vs. First Civil Judge, Class I, Nagpur and another [AIR 1958 Bombay 262] and Nutan Mills Vs. Employees State Insurance Corporation [AIR 1956 Bombay 336] for submitting that even maternity leave benefit was not considered to be wages in the first judgment and in the second judgment it was held of course in the light of the unamended definition of the term 'wages' as found in sub-section (22) of Section 2 of the Act that lay-off compensation would not be included in the term 'wages' for the purpose of computing contributions from the employees and employers and said

8. Before referring to the aforesaid decisions it will be necessary to have a quick glance at the scheme of the Act. The Act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. Thus this is a beneficial piece of legislation which grants a statutory insurance coverage to employees in the establishments covered by the Act so that the Corporation would be statutorily enjoined to make available these benefits to the suffering employees and they may not have to be at the mercy of the employers concerned who may or may not readily make available these benefits to the suffering employees if statutory coverage of the Act is not available to them. As laid down by Section 1 sub-section (4) of the Act it shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories. As per sub-section (5) of Section 1 of the Act, 'the appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishment, industrial, commercial, agricultural or otherwise' Section 2 is the Definition Section. Sub-section (4) thereof defines 'contribution' to mean, 'the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act'. Sub-section (6) of Section 2 defines 'Corporation' to mean "Employees' State Insurance Corporation set up under this Act." The appellant-Corporation is the said Corporation. Sub-section (8) of Section 2 defines 'employment injury' to mean, 'a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India'. Sub-section (9) of Section 2 defines 'employee' to mean, 'any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies'. We are not concerned in the present cases with such employees whose wages exceed the prescribed limit of wages permanently. Hence we need not refer to that part of the definition of 'employee'. Sub-section (10) of Section 2 defines 'exempted employee' to mean, 'an employee who is not liable under this Act to pay the employees' contribution.' Such exempted employees are contemplated by Section 42 which lays down that, 'no employee's contribution shall be payable by or on behalf of an employee whose average daily wages during a wage period are below such wages as may be prescribed by the Central Government'. Chapter IV deals with 'Contribution'. Section 38 lays down that, 'subject to the provisions of this Act, all employees in factories, or establishments to which this Act applies shall be insured in the manner provided by this Act'. Section 39 deals with contributions payable under the Act.' Such contribution as per sub-section (1) thereof will comprise of contribution payable by the employer (referred to as the employer's contribution) and the contribution paid by the employee (referred to as the employee's contribution) and shall be paid to the Corporation. These contributions are to be paid at such rates as may be prescribed by the Central

Government. Section 40 enjoins the principal employer to pay contribution in the first instance. Section 41 deals with 'Recovery of contribution from immediate employer'. As indicated earlier, the benefits flowing from the scheme of the Act which are available to the insured employees comprise of diverse benefits enumerated in Chapter V as provided in Section 46 to 73.

9. On the aforesaid scheme of this Act, therefore, it becomes very clear that all employees are entitled to get the statutory coverage of the benefits being insured employees and any person employed for wages is to be treated as an employee for the purpose of the Act. Under these circumstance an employee who is admittedly covered by the Act and who is entitled to get the benefits under the Act as insured employee will not cease to be an employee covered by the Act if he is placed under interim suspension pending domestic inquiry on any alleged misconduct by his employer. It is axiomatic to say that during suspension period pending enquiry the employer-employee relationship does not come to an end. It would come to an end only when after inquiry his service on proof of misconduct are order to be terminated. Till then he continues to be an employee for all purposes subject to only two consequence flowing from such interim suspension, namely, in the first place the employee will remain prohibited from actual.