SUPREME COURT OF INDIA

Whirlpool of India Ltd.

Vs.

Employees' State Insurance Corporation

(S.B. Majmudar, S.N. Phukan and Y.K. Sabharwal, JJ.)

Civil Appeal No. 1983 of 2000 (Arising out of SLP(C) No. 4029 of 1999).

08.03.2000

JUDGMENT

Y.K. Sabharwal, J. - Leave granted.

2. The appellant under a `Production Incentive Scheme' pays to its workers production incentive at the rates specified in the Scheme besides normal wages. For the purpose of calculating contributions towards Employees' State Insurance Fund, the payment of production incentive by the appellant to its workers is not treated by it as `wages' within the meaning of the term as defined in Section 2(22) of the Employees' State Insurance Act, 1948 (for short `the Act'). The respondent-Employees' State Insurance Corporation (for short `the Corporation') treating the said payment as `wages' issued a demand to the appellant for payment of contributions towards the Employees' State Insurance Fund. This led to filing of an application under Section 75 of the Act by the appellant before Employees' Insurance Court challenging the said demand. The said Court allowed the application and quashed the demand. It held that the payment was made quarterly and was not `wages' under the Act as it did not fall either under the first part of Section 2(22) or under third part thereof. The payment made by the appellant, it was held, did not fall under the first part of the definition of `wages' as there was no agreement between the appellant and its workers for payment of production incentive and also that it did not fall under the third part of the definition as the actual payment was made quarterly which means at intervals exceeding two months.

3. The appeal filed by the Corporation against the order of the Employees' Insurance Court was allowed by a learned Single Judge of the High Court holding that the production incentive was calculated on the basis of the extra work done by the workers in each month but to avoid contribution under the Act, the payment was postponed and was made quarterly. The Letters Patent Appeal of the appellant was

dismissed and, therefore, the present appeal.

4. The question for decision is whether payments towards production incentive made by the appellant to its workers under the `Production Incentive Scheme' fall within the scope and ambit of `wages' as defined in Section 2(22) of the Act and also the effect of payments being made quarterly i.e. at intervals exceeding two months.

5. The Act is a social legislation enacteded to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Broadly this is the purpose for which the Corporation has been established under Section 3 of the Act. The main source of the Employees' State Insurance Fund is the contributions paid to the Corporation (Section 26). The benefits to be provided to insured persons and others are as provided in Chapter V, in particular, Section 46 thereof. The words and expressions used but not defined in the Act and defined in the Industrial Disputes Act, 1947, are to have the meanings respectively assigned to them in the Industrial Disputes Act. Undoubtedly, any provision of which two interpretations may be possible would deserve such construction as would be beneficial to the working class but, at the same time, we cannot give a go-bye to the plain language of a provision.

6. Under first part of Section 2(22), all the remuneration paid or payable in cash to an employee, if the term of the contract of employment, express or implied, were fulfilled would be `wages'. Under this part neither the actual payment nor when the payment is made is of any relevance. The last part of Section 2(22) relates to payment of additional remuneration. The additional remuneration, if any, paid at intervals not exceeding two months and not falling in clauses (a) to (d) would also be wages within the meaning of the terms as defined. Under this part of the definition, there has to be payment and not only payability and the payment has to be at intervals not exceeding two months.

7. The High Court while coming to the conclusion that the payment of production incentive to its workers by the appellant is `wages' within the meaning of the Act has relied upon the decision of this Court in ***Wellman (India) Pvt. Ltd. v. Employees' State Insurance Corporation, (1994)1 SCC 219 : 1994(1) SCT 209*** and ***Modella Woollens Ltd. v. Employees' State Insurance Corporation and Anr., 1994 Supp.(3) SCC 580.***

8. Wellman's case deals with the attendance bonus payable to the employees under the terms of settlement which became part of contract of employment and was thus held to be remuneration payable under the contract of employment. That fell under the first part of the definition. In this case, it was held that the expression `if any paid'

after the words `other additional remuneration' will be inconsistent if the remuneration is payable under the contract of employment since such payment is not dependent on the will of the employer but on the fulfillment of the terms of the contract. Every remuneration payable under the contract would fall under the first part of the definition. The payment in Wellman's case fell within the first part of the definition of `wages'. In the present case, neither Insurance Court nor learned Single Judge nor Division Bench has held that the payment of production incentive was contractual falling within the first part of the definition of wages.

9. In Modella Woollens' case also, the payment of production bonus to the employees though made at the end of each quarter was held to be wages as the amount was payable under the agreement. Thus this case too was concerned with the first part of the definition of wages.

10. None of the aforesaid decisions has any applicability to the facts of the present case.

In ***M\s. Harihar Polyfibres v. Regional Director, ESI Corporation, (1984)4 SCC 324***, affirming the Full Bench of the Andhra Pradesh High Court holding that under third part of the definition to constitute `wages', it has to be actual facum of payment made at intervals not exceeding two months, `House Rent Allowance', `Night Shift Allowance', `Incentive Allowance' and `Heat, Gas and Dust Allowance' were held to be covered by the definition of `wages' in Section 2(22). In this case, it was held that for the aforesaid allowances to be covered by definition of `wages', it was not necessary that the payments should be in terms of employment.

11. In ***Handloom House, Ernakulam v. Regional Director, ESI, 1999(2) SCT 729 (SC)***, it has been held that any additional remuneration paid at intervals exceeding two months has been excluded from the purview of the definition. It is clear that if the amount paid or payable is not remuneration on fulfillment of the terms of employment falling under the first part and is also not covered by the second part of the definition, it would be wages if the payment is made at intervals not exceeding two months.

12. Learned counsel for the respondent made a feeble attempt to contend that the payment in the present case would fall within the first part of definition of `wages' as there is an implied contract for payment of the said amount. As already noticed, none of the Courts has held that the amount in question was paid or was payable on fulfillment of terms of contract of employment. Further learned counsel fairly conceded that the payment under the scheme cannot be termed a payment under settlement as contemplated by Section 2(p) of the Industrial Disputes Act. It also cannot be held that the payment in

question under the scheme would amount to a condition of service requiring compliance of Section 9-A of the Industrial Disputes Act for effecting any change in the conditions of service. The payment thus does not fall within the first part of definition of `wages'.

13. It is evident that the additional remuneration to become wages has to be "paid" at intervals not exceeding two months as distinguished from `being payable'. Thus, under the last part there has to be actual payment. The High Court has found that the payment was made quarterly. It is not for us to rewrite the definition of wages even if we assume that there is a possibility of misuse by employers by making the payment at a period exceeding two months and thus circumventing the provisions of the Act. When in the last part of Section 2(22), the word used is `paid', we cannot add the word `payable' or other similar expression thereto.

14. In view of the aforesaid, the payment of production incentive, on the facts of present case, does not fall either under the first part or last part of the definition of term `wages' as defined in Section 2(22) of the Act.

15. For the aforesaid reasons, we allow the appeal and set aside the judgment of the High Court and restore that of Employees' Insurance Court. Parties are, however, left to bear their own costs.

Appeal allowed.