SUPREME COURT OF INDIA

TI Cycles of India, Amattur

Vs.

M.K.Gurumani

C.A.No.4461 of 1996

(S. RAjendra Babu and Shivaraj V. Patil JJ.)

24.08.2001

JUDGMENT

1. Leave granted.

2. Respondent Nos. 3 to 23 were workmen in the establishment of the appellant. They filed applications under the *Payment of Gratuity Act, 1972* [hereinafter referred to as the Act] for a direction to pay balance of gratuity by the appellant for a period of service rendered by them. Respondent Nos. 3 to 23 retired from the establishment of the appellant and they were paid gratuity calculating basic wages and dearness allowance only. They claimed that they were also paid incentive wages as per Section 4(2) of the Act. The appellant contended that they were governed by settlements and awards regarding wages and other service conditions, which had clearly set out that incentive earnings should not be reckoned as wages for the purpose of provident fund, bonus, gratuity, ESI, overtime, etc. They also submitted that the incentive earnings would not partake the character of wages for the purpose of gratuity under the provisions of the Act and that the respondents had already received gratuity on the basis of last drawn basic wages and dearness allowance and, therefore, sought for dismissal of the applications.

2. The Controlling Authority held as follows:

> "For the incentive payment, the norms fixed were in pieces, per jar, per unit, per truck per paid, per trap per cistern, per hands, etc. Therefore, incentive payment was made on the basis of pieces or number of items produced."

3. On that basis, the Controlling Authority concluded that Section 4(2) of the Act was attracted as it deals with the piece rate wages but wages paid for any overtime work should not be taken into account as wages and that the appellant had paid incentive wages to their workers on the basis of pieces produced by the workers. It was further held that the incentive wages were actually calculated on the basis of pieces and also the rate was fixed per piece or unit, etc. In those circumstances, the Controlling Authority held that incentive wages were actually paid piece rate wages. Although the Controlling Authority agreed with the

contention that wages would mean basic wage and dearness allowance, he stated that the incentive wages paid on the basis of piece rates and amount fixed per piece have to be treated as piece rate wages in terms of Section 4(2) of the Act and, therefore, allowed the applications. Appeal preferred against the same having failed, writ petition was filed. On dismissal of the writ petition further appeal was preferred before the High Court. The Division Bench of the High Court after referring to various decisions of this Court and of the High Court, held that the incentive payments in question would fall within the definition of wages for the purpose of the Act. The High Court found that there is a difference in the term wages employed under the Act and basic wages defined under the *Employees Provident Funds & Miscellaneous Provisions Act, 1952* [for short PF Act]. While the Act defines the term wages, the PF Act defines the term basic wages and, therefore, the term basic wages has got to be contra-distinguished from the term wages and that difference will have to be construed in the context of the enactment and the purpose thereof. Apart from that the High Court relied upon Section 4(2) of the Act as has been done by the Controlling Authority. The High Court, having dismissed the writ appeal, this appeal is preferred by special leave.

4. Shri Andhyarujina, learned Senior Advocate and Shri A.T.M.Sampath, learned counsel for the appellant, submitted that the definitions of the term basic wages in the PF Act and the term wages in the Act are para-materia and both cover all emoluments while on duty but exclude any bonus, commission, HRA, overtime wages and any other allowance. They also submitted that a perusal of the terms of settlements between the parties would make it clear that the incentive scheme introduced by them is not a piece rate wages and the concept relating to bonus has been altogether ignored both by the Controlling Authority and the High Court.

5. On behalf of the respondents, it is submitted that the view taken by the High Court and the authorities is justified and we should not interfere with the order made by the High Court. Section 2(s) of the Act defines the term wages as under:

> "wages means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, HRA, overtime wages and any other allowance."

6. Under Section 2(b) of the PF Act, the term basic wages is defined which reads as follows:

> "basic wages means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or are payable in cash to him, but does not include
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> (i) the cash value of any food concession;
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> (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to any employee on account of a rise in the cost of living), house-rent allowance,

overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;

7. A comparison between these two provisions will make it clear that there is no basic difference between the two expressions used in these two enactments insofar as the exclusion of bonus from the emoluments is concerned. The High Court has been carried away by the expression basic wages used in the PF Act while the term wages is used in the Act but that distinction will not be of any impact, if we closely examine the manner in which the two terms are defined in the respective Acts. The nomenclature of the two expressions will not alter the contents of the two terms. Therefore, the High Court ought to have considered this aspect of the matter. Further this Court in *Straw Board Mfg. Co. Ltd. vs. Its Workmen*[1], was concerned with the gratuity scheme formulated prior to the Act and this is how this Court interpreted this aspect of the matter:

> "26. Decisions have been brought to our notice some of which refer to basic wages and others to consolidated wages as the foundation for computation of gratuity. These are matters of discretion and the fee of the circumstances prevalent in the industry by the Tribunal and, unless it has gone haywire in the exercise of its discretion the award should stand. We see that in the Payment of Gratuity Act also, not basic wages but gross wages inclusive of dearness allowance; have been taken so as the basis. This, incidentally, reflects the industrial sense in the country which has been crystallised into legislation. (emphasis supplied)
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> x x x x x x
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> We clarify that wages will mean and include basic wages and dearness allowance and nothing else.."

8. Again this Court in *Bridge & Roof Company (India) Ltd. & Ors. and Union of India & Ors.*[2], examined the scope of the term basic wages as defined in PF Act and as to whether bonus would be included in the same and it was explained that the word bonus, not having been qualified in any manner in Section 2(b)(ii) of the PF Act, would not include only profit bonus but every other kind of bonus amounts paid by way of bonus under the scheme and held to be excluded from the definition of basic wages covered by the exception to Section 2(b) of the PF Act. Therefore, these two decisions make it clear that bonus stands excluded from the purview of wages for the purpose of calculating the contribution to be made in the provident fund or the gratuity payable under the Act. These decisions could not have been brushed aside or explained away in the manner done by the High Court, one by stating that the decision has no bearing after the Act came into force and the other that the enactment is different. The essence of wages was explained in Straw Boards case (supra) with reference to gratuity and the Act was relied upon to state what the law on the matter stood then is reflected in the Act, while in Bridge & Roof Company (India) Ltd. (supra) this Court explained the scope of definition of basic wages which we have held to be identical with the

term wages used in the Act. However, the High Court has also proceeded to consider the fact that the gratuity payable under the Act would cover bonus paid in the present cases inasmuch as the same is only an incentive wage paid on piece rate work and not as bonus as such. Therefore, it is necessary for us to examine the economic concept of bonus and as to the manner in which the said expression has been understood in the context of industrial jurisprudence.

9. Report of the National Commission on Labour dealt with this aspect of the matter under the heading Wage Incentives or Production Bonus. This is what was stated by the said Commission:

10. The incentives given to the labour by their employers for achieving higher productivity, are generally known as incentive bonus or production bonus. In other words the incentive for increased production is generally known as production bonus. Broadly the basis of remuneration for work in industry is based on two fundamental arrangements, viz. (i) payment by time, and (ii) payment by output. In the former case, a worker is paid a predetermined amount for a specified unit of time which may be an hour, a day, a week, or a month. Under this arrangement, there is no direct control on the amount of work done by the workers except perhaps to a certain extent through supervision so long as he is engaged on tasks specified by the employer. In the latter arrangement, the worker is remunerated according to his output or the output of the group to which he belongs. It may assume complex forms such as differential piece work wherein rates of remuneration per unit of output may be either progressive or regressive. There are also other types of remuneration that are not directly dependent on production, like bonuses for regular attendance, length of service, quality of production and elimination of waste, all constituting an area of wage incentives.

11. The First and the Second Five Year Plans also recommended the introduction of incentive to promote more efficient work in industries with due safeguards to protect the interests of the workers through the guarantee of minimum or fall-back wage and protection against fatigue and undue speed up. In the Second Five Year Plan, it was further made clear that earnings beyond the minimum wage should be necessarily related to results and workers should be consulted before a system of payment by results was introduced in such an establishment. The Third Five Year Plan emphasised the need for higher productivity and reduction in the unit cost of production and put the responsibility on the management to provide the most efficient equipment, correct conditions and methods of work, and adequate training and suitably psychological and material incentives for the workers. One thing is clear from the report and the recommendations made in the various Five Year Plans that there is a base of standard above which extra payment is made for extra production in addition to basic wage. Sometimes, the piece rate work is termed as bonus and such a question was considered by this Court in *Daily Partap vs. Regional Provident Fund Commissioner*[3]. The test adopted in that case is that in order to be excluded from basic wages the payment under such a scheme must have a direct nexus and linkage with the amount of extra output. On an examination of the scheme in that case, it was found that less than normal number of workmen doing normal work of a shift, production bonus was given

according to the deficiency in the numerical strength of workmen and extra output given by any workman in any shift, output of different types of workmen being measured according to the prescribed norms but production bonus not directly linked with the amount of the extra output furnished by the workman concerned but paid at a uniform rate of his normal wages was held to be not bonus at all and the scheme was not a genuine one. It was not the same as incentive bonus scheme.

12. In the present case, the scheme sets out the terms under the settlements. Clause 1.1 sets out the objectives as follows:

13. The objective of the scheme is to ensure optimum production of high quality, promote safety and cost consciousness and maintain a high level of productivity.

14. Incentive payment is based on two components: group performance index and individual/sectional performance index. It was made clear that no incentive will be payable to workmen on leave, absent, away from duty or on holidays. The minimum performance level is indicated in each sectional incentive table and below which no incentive will be paid for any reason whatsoever. If a person works for more than one group during the month, he will be awarded incentive as per the performance of each group in the respective periods. Clause 9.1 also sets out incentive payment payable under the scheme will not be regarded as wages and, therefore, the payment shall not be taken into account for the purpose of leave wages, overtime wages, wages in lieu of notice, provident fund contributions, bonus, gratuity or any other allowance. However, this clause is subject to review in case of statutory amendments if any.

15. The Authorities were carried away by considering that the bonus is payable on the basis of output equivalent to certain pieces per man-day. But it is made clear in the scheme that each payment will be made not on the basis of pieces of per man-day nor is it a piece rate work for which wages are paid but it is an additional incentive for payment of bonus in respect of extra work done. The measure of extra work done is indicated by pieces and not wages as such that are paid on that basis. It is not that in respect of each piece any wages are paid but altogether if certain number of pieces are produced, additional incentive will be payable at a particular rate. Therefore, the authorities have completely missed scope of the scheme and have incorrectly interpreted the same. Inasmuch as both the High Court and the authorities have incorrectly understood the position in law and have wrongly held that the concept of wages under the Act would include bonus and that even on facts the scheme would attract Section 4(2) of the Act. Proviso to Section 4(2) of the Act is to the effect that in case of a piece-rated employee, daily wages shall be computed in a particular manner but that is not the rate at which the wages are paid in the present case at all. Therefore, Section 4(2) of the Act is not attracted in the case of the present scheme with which we are concerned.

16. Hence this appeal is allowed setting aside the orders made by the authorities and the High Court. If the payments have already been made to the respective respondents in terms of the orders made by the authorities, we do not think, we should disturb the same in these proceedings which have been mainly filed for the purpose of interpreting the provisions of

law and the scheme. Therefore, no recovery shall be effected in respect of payments that may have been made pursuant to the orders under appeal.

17. Subject to the aforesaid directions, the appeal is allowed. No costs.
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18. The facts arising in this appeal are identical to those considered by us in C.A.No. ./2001 (@ SLP(c) No.11497/98). In view of the reasons supplied in the said appeal, this appeal shall also stand allowed subject to the similar directions given therein.

[1]*1977 I LLJ 463*
[2]*1962 II LLJ 490*
[3]*1998 (8) SCC 90*