SUPREME COURT OF INDIA

Kichha Sugar Company Limited Th. Gen. Mang.

Vs.

Tarai Chini Mill Majdoor Union, Uttarkhand

C.A.No.77 of 2014

(Chandramauli Kr. Prasad and Jagdish Singh Khehar JJ.)

06.01.2014

JUDGMENT

CHANDRAMAULI KR. PRASAD, J.

1. Kichha Sugar Company Limited aggrieved by the order dated 24th of June, 2008 passed by the Uttarakhand High Court in WPMS No. 3717 of 2001, affirming the award dated 12th of November, 1992 directing payment of Hill Development Allowance after taking into account the amount received as "leave encashment and overtime wages", has preferred this special leave petition.

2. Leave granted.

3. Facts lie in a narrow compass;

4. The Government of Uttar Pradesh, by its order dated 5th of January, 1981, had directed for payment of Hill Development Allowance to its employees working at specified hill areas at the rate of 15% of the basic wage. Kichha Sugar Company Limited, the appellant herein (hereinafter referred to as 'the employer'), being a unit of a subsidiary of U.P. Government Corporation, adopted the same and started paying Hill Development Allowance at the rate of 15% of the basic wage. The workmen demanded calculation of 15% of the said allowance by taking into account the amount paid as overtime, leave encashment and all other allowances. When the employer did not agree to the calculation of the Hill Development Allowance as suggested by the workmen, a dispute was raised. It was referred to

conciliation and on its failure, the competent Government made the following reference.

5. Whether the exclusion of payment of overtime, leave encashment, bonus and retaining allowance while calculating the Hill Development Allowance by the Employer is legal and justified? If not, to what relief, the workmen concerned are entitled to get?

6. It is common ground that while calculating Hill Development Allowance, the employer has not taken into account any other amount including amount received as bonus, leave encashment, retaining allowance or overtime wages. It is the claim of the workmen that 15% of the Hill Development Allowance is to be calculated and paid after taking into account the payments made under the aforesaid headings. The employer repudiated their claim and according to it, the workmen shall be entitled to 15% of the basic wages as Hill Development Allowance. The Industrial Tribunal gave opportunity to both the employer and the workmen to file their claim and produce material and on consideration of the same, gave award dated 12th of November, 1992 directing the employer to "give Hill Development Allowance to their permanent and regular workers on the amount received regarding leave encashment and overtime wages." However, the Tribunal observed that "Hill Development Allowance shall not be payable on bonus and retaining allowance or on any other allowances". The employer, aggrieved by the award preferred writ petition before the High Court, which affirmed the same without any discussion or assigning any reason in the following words:

> "9. After going through the aforesaid finding recorded by the tribunal concerned, I find no infirmity or illegality in the impugned award passed by the tribunal concerned and the same is hereby confirmed."

7. Before we enter into the merit of the case, it is apt to understand what Hill Development Allowance is. In our opinion, Hill Development Allowances is nothing but a compensatory allowance. A compensatory allowance broadly falls into three categories; (i) allowance to meet the high cost of living in certain, specially costly cities and other local areas; (ii) allowance to compensate for the hardship of service in certain areas, e.g. areas which have a bad climate and/or difficult to access; and (iii) allowances granted in areas, e.g. field service areas, where, because of special conditions of living or service, an employee cannot, besides other disadvantages, have his family with him. There may be cases in which more than one of these conditions for grant of compensatory allowance is

fulfilled. It seems that taking into account bad climate and remote and difficult access, the decision was taken to grant the Hill Development Allowance at the rate of 15% of the basic wage.

8. We have heard Mr. Tanmaya Agarwal for the appellant and Mr. Jatin Zaveri for the respondent. Mr. Agarwal submits that basic wage will not include the amount received as leave encashment and overtime wages. According to him, basic wage would mean the wage which is paid to all the employees. He submits that leave encashment and overtime wages would vary from workman to workman and, therefore, those cannot be included in the basic wage. In support of the submission he placed reliance on a judgment of this Court in the case of Muir Mills Co. Ltd. v. Workmen, AIR1960 SC 985 and our attention has been drawn to the following passage from Paragraph 11 of the judgment, which reads as follows:

> "11. Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. The quantum of earnings in such bonuses varies from individual to individual according to their efficiency and diligence; it will vary sometimes from season to season with the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery. This very element of variation, excludes this part of workmen's emoluments from the connotation of "basic wages"."

9. Mr. Garg, however submits that any amount including the amount paid as leave encashment and overtime wages do come within the expression 'basic wage' and, hence, have to be accounted for the purpose of calculating 15% of the basic pay.

10. In view of the rival submissions, the question which falls for our determination is as to the meaning of the expression 'basic wage'. The expression 'basic wage' has not been explained by the Government in the order granting Hill Development Allowance. It has been defined only under Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Therefore, we have to see what meaning is to be given to this expression in the present context. Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 defines 'basic wages' as follows:

> "2. Definitions. - In this Act, unless the context otherwise requires, -

(a) xxx xxx xxx

(b) "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 payable in cash to him, but does not include-

i) the cash value of any food concession;

ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an 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;"

According to http://www.merriam-webster.com (Merriam Webster Dictionary) the word 'basic wage' means as follows:

"1. A wage or salary based on the cost of living and used as a standard for calculating rates of pay

2. A rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime."

11. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. As for example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. In view of what we have observed above, we are of the opinion that the amount

received as leave encashment and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance. The view which we have taken finds support from the judgment of this Court in Muir Mills Co. Ltd. (supra), relied on by the appellant, in which it has been specifically held that the basic wage shall not include bonus.

12. It also finds support from a judgment of this Court in the case of Manipal Academy of Higher Education v. Provident Fund Commr.,(2008) 5 SCC 428 in which it has been held as follows:

> "10. The basic principles as laid down in Bridge & Roofs case, AIR 1963 SC 1474, on a combined reading of Sections 2(b) and 6 are as follows:
>
> (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
>
> (b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.
>
> (c) Conversely, any payment by way of a special incentive or work is not basic wages."

13. In view of what we have observed above, the impugned award and the judgment of the High Court are illegal and cannot be allowed to stand.

14. In the result, we allow this appeal, set aside the award and the judgment of the High Court and hold that overtime allowance and leave encashment are not fit to be taken into account for calculating the Hill Development Allowance. No costs.