
(1979) 12 CAL CK 0002
In the Calcutta High Court

Amal Kumar Ghatak

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 13-12-1979

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 5, 6, 7A
PROVIDENT FUNDS ACT, 1925 — Section 2

Citation : (1980) 1 CALLT 21 : 84 CWN 490 : (1980) 2 LLJ 308

Hon'ble Judges : M.N. Ray, J

Bench : Single Bench

Judgement

M.N. Ray, J.—The average rate of plucking of tea leaf, which is known as Ticca, and remuneration for the same for the tea garden laborers including men, women and children are generally settled and in the instant case the same was really settled in terms of the settlement as disclosed and it appears that "extra leaf price" in Doars and Tarai Gardens which was initially fixed at 5.5 paisa was raised to seven paisa per kg. with effect from 9th June, 1969, in the Tea Gardens at Doars and Tarai.

2. The point involved in this case would be whether payment for such extra plucking of leaf, over and above the Ticca, by a workman and the payment received by him for that, would be overtime or not.

3. The petitioner is the owner of a Tea Garden known as Mission Hill Tea Estate within the police station, Gorubathan, in the District of Darjeeling. He has stated that the laborers, who pluck tea leaf are known as pluckers and they get fixed rate of wages and dearness allowance as per the rate prevailing. He has stated that provident funds are paid accordingly under the Employees' Provident Funds and Family Pension Fund Act, 1952, and the schemes framed there under. It is also the case that daily wages If the workers are fixed on the basis of the quantity which an average workman can pluck in a day, consisting of eight working hours. The petitioner has stated further that during the tea plucking

period from June to October, those pluckers pluck more than the fixed or scheduled quantity which they are required to pluck per day and in the event of such plucking those pluckers, who pluck more are paid extra in cash in the nature of overtime allowance at the rate as mentioned in the petition. This extra payment is known as "extra leaf price" which according to the petitioner are not added to the respective pay bills.

4. It appears that on or about 12th August, 1975, the Regional Provident Fund Commissioner concerned, respondent No. 1, asked the petitioner by notice to appear before him with necessary evidence and also produce all records before him for the purpose of conducting an enquiry and determining the amount of Provident Fund and Family Pension Fund on such "extra leaf price", said to be due from the petitioner for the period from June, 1973, to June, 1975. On receipt of such notice, by the representation dated 26th August, 1975, the petitioners stated that contribution on "extra leaf price" were not due on the ground that such earnings were neither "basic wages" nor "pay" within the meaning of the Act as mentioned hereinbefore or the scheme framed there under. It was also intimated that the garden concerned did not deduct any contributions from "extra leaf price" as objections arose from the workers on the ground that such payments to them were neither basic wages nor pay and as such not deductible apart from contending that from the definition of basic wages in Section 2 of the Provident Funds Act, it would appear that the same would not include "extra leaf price", which is an extra earning of some of the workers for some days and under paragraph 7(c) of the Family Pension Scheme, "pay" means basic wages, dearness allowance and retaining allowance, if any, and cash value of food concession. It was also contended that under paragraph 2(f) of the Provident Funds Scheme also, the said payment on "extra leaf price" could not be taken into consideration in the matter of deductions, as claimed.

5. It has been stated that even in spite of such representation or clarification, the Regional Provident Fund Commissioner concerned initiated proceedings u/s 7A of the Employee's Provident Funds Act on "extra leaf price" and after some more correspondence, the said respondent No. 1 informed the petitioner that he had assessed the amount of contribution at Rs. 640. Such assessment has been claimed by the petitioner not only to be unauthorized and illegal but also void ab initio and without jurisdiction. It also appears that consequent to the failure of the petitioner to comply with the demand as recorded hereinbefore, a certificate proceeding was sought to be initiated through the records in Annexure "D" and by a subsequent notice on 13th November, 1975, the Regional Provident Fund Commissioner concerned again demanded payment of the claim as mentioned above and also threatened the petitioner that necessary consequences including prosecution, if there was no compliance with the demand, would follow.

6. Section 6 of the Employees' Provident Funds and Family Pension Fund Act, 1952, deals with levy of contribution to be made by the employer to the

concerned fund and lays down that the rate of such contribution to be initially paid by the employer to the fund, shall be "six and quarter per cent of the basic wages, dearness allowance and retaining allowance" for the time being payable to each of the employees and Section 2(b) of that Act defines basic wages, meaning all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment but does not include house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employees. It also appears that the Employees' Provident Funds Scheme framed u/s 5 and the Employee's Family Pension Scheme framed under 6(A) of the Act are to be worked in accordance with the provisions of the same and paragraph 15 of the Employee's Family Pension Scheme, 1961, requires every employer to send to the Commissioner a consolidated return of the employee's showing the basic wages and retaining allowances, if any, apart from dearness allowance. Paragraph 29 of the Employee's Provident Funds Scheme, 1952, requires that the contributions payable by the employer under the scheme shall be at the rate of 6% of the basic wages, dearness allowance and retaining allowance payable to each employee to whom the scheme applies. It appears further that paragraph 32 of the scheme prescribes the mode of recovery of an employee's share of contribution and lays down that the amount of member's contribution paid by the employer (or a contractor) shall notwithstanding the provision in the scheme or any law for the time being in force or any contract to the contrary be recoverable by means of deduction from the wages of the member and not otherwise.

7. On the basis of and with reference to the provisions as mentioned above, Mr. Raj, appearing in support of the Rule, contended that "extra leaf price" being in the nature of overtime allowance, paid due to the exigency of the situation cannot be included within the meaning of "basic wages" as defined in the Act or the "pay" as defined in the scheme and as such no contribution towards provident funds is payable on the same. In view of the above, it was contended by him that the appropriate authorities who are the respondents herein, have wrongly proceeded to issue the notices and also to initiate the relevant certificate proceedings as mentioned hereinbefore.

8. The affidavit in opposition dated 13th November, 1979 in the instant case was filed through Sailendra Nath Deb, Provident Funds Inspector. He has stated that M/s. Mission Hill Tea Estate, is an establishment owned by M/s. P.N. Ghatak & Co. the sole proprietor of which is Sri A.N. Ghatak and this undertaking was brought under the purview of the Act with effect from 31st July, 1966, and was required to comply with the provisions as mentioned above since then. He has further stated that Mission Hill Tea Estate is a Tea Factory registered under the provisions of the Factories Act, 1948. It is his case that the petitioner by reason of not depositing the Provident Funds contribution on account of wages earned by the employees, against the "extra leaf price" work and the rate of payment, which has been fixed on the basis of how much of plucking was done during

normal course of working by the individual employees and not upon the time he had taken for it, the employer was liable under the various penal provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1954, and for their default. It is the case that before initiating or proceeding with the provisions under the Act, the defaulting employers are usually given reasonable opportunities to represent their cases in accordance with Section 7A of this Act, for the determination of the dues and as such the summons was issued to the petitioner on 12th August, 1975, requesting him to appear or to have his case effectively represented as mentioned above. He has denied the contentions of the petitioner that payment made on account of "extra price" should not be brought under the provision of the contributions under the statutes as mentioned above. The deponent has denied that "extra leaf price" is neither basic wages nor pay as claimed. He has further stated that the contentions as sought to be raised now, are not correct and are without any basis as earnings on "extra leaf price" work by the workers is deemed to be plucking during the normal working hours and payments towards leaf is, as such, liable to provident fund deductions. The deponent has further stated that in view of the facts of this case and the provisions and circumstances as mentioned above, the proceeding as sought to be initiated u/s 7A was due and proper and so also the subsequent proceeding as taken. He has claimed that the petitioner without any reason or basis has withheld and is withholding due payment on account of provident fund contributions. He has categorically denied the submissions of the petitioner that "extra leaf price" would come within the definition of overtime or could be considered as such.

9. Mr. Raj, appearing in support of the Rule, with reference to the provisions as mentioned above and the contentions as raised in the petition claimed that payments which were made to the workmen concerned for plucking more than the Ticca would not come within the definition of basic wages as defined in Section 2(b) of the said Act. "Basic wages" in terms of Section 2(b) of the Act would mean all emoluments which are earned by an employee while on duty or on leave with wages 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) * * * (ii) any dearness allowance (that is to say all cash payments by whatever name called paid to an employee on account of 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) * * *

10. In support of his contentions, as above, Mr. Raj referred to the determinations in the case of Bridge and Roof Co. (India) Ltd. Vs. Union of India (UOI), . In that case Sub-section 2(b), 6 and 19(A) of the Employees' Provident Funds Act, 1952, were considered and construed and it has been observed that the basic wages do not include any kind of bonus which was known before 1952

including "production bonus". In fact, it has been specifically observed that Clause of Section 2(b) excludes, amongst other allowances, bonus payable to the employee in respect of his employment or of work done in such employment, from the definition of "basic wages". This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment, are excluded, from the main part of the definition of basic wages. The word "bonus" has been used in this Clause without any qualification. Therefore, it would not be improper to infer that when the word "bonus" was used without any qualification in the Clause the Legislature had in mind every kind of bonus that may be payable to an employee. The Legislature could not have been unaware that different kinds of bonus were being paid by different concerns in different industries, when it passed the Act in 1952. When the word "bonus" is used without any qualification it does not only mean profit bonus. On the other hand, the use of the word "bonus" without any qualifying word before it or without any limitation as to the year after it, must refer to bonus of all kinds known to industrial law and industrial adjudication before 1952 including the "production bonus" The production bonus is outside the definition of "basic wages" in Section 2(b) and, therefore, the definition of the Central Government u/s 19A of the Act by which such a bonus has been included in the definition of "basic wages" is incorrect. It was the specific submission of Mr. Raj that in view of the ration of the determination of the Supreme Court as mentioned above and when neither the Factories Act nor Payment of Wages Act has been applicable in the instant case, the demand, claim or levy as sought to be made against the petitioner, was improper.

11. Under the provisions of the Employee's Provident Funds Act, 1952, overtime has not been defined. Thus, for the meaning of overtime or the definition thereof, we shall have to look into the dictionary meaning or precedents, if any. ? Overtime" according to Oxford Dictionary, would mean beyond regular hours of working or extra time worked. The same, according to Chambers, would mean time employed in working beyond the regular hours and work done in such time or pay for such work. Overtime, according to Webster, means time in excess of a set limit or working time in excess of standard day or week. Thus, from the above dictionary meanings it is certain that overtime is something which is done not on time but thereafter. If extra work is done on time, the same in view of the above, according to me, would not come within the definition of overtime and as such the payments received by the workmen of the petitioner concerned, for plucking extra leaf and the Ticca as prescribed and within the normal duty hours, would not be overtime. For such extra plucking of leaf, the workmen concerned may be entitled to extra remunerations but such remunerations, as mentioned above, would not in my view be overtime. I am also of the view that the determinations in the case of Bridge and Roof Co. (India) Ltd. v. Union of India 1962 II L.L.J. 190 : (1963) 23 F.J.R. 550, is distinguishable and have no

application in the facts of the present case and Mr. Tahai Ali also appropriately submitted that production bonus, being one of the category or class of bonus, was appropriately included in the judgment or determinations as mentioned above, under the heading "bonus" and was also duly held to be excluded in the matter of the contributions, as bonus as a class has been excluded u/s 2(b)(ii) of the Employees' Provident Funds Act, 1952. He also contended with substance that extra head price as received by the workman concerned, since extra leaf price as received by them could not be termed or considered as "overtime", so the determination, as cited at the Bar, was also inapplicable in this case.

12. In view of the above, the argument of Mr. Raj fails, so also the Rule, and the same is thus discharged. There will be no order for cost.