(2002) 12 KL CK 0036

In the High Court Of Kerala

Case No : M.F.A. No. 1293 of 1991

Damodaran APPELLANT

Vs

Employees State Insurance Corporation RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(22), 22

Citation : (2003) 97 FLR 451 : (2003) 2 ILR (Ker) 115 : (2003) 1 KLT 395 : (2003) 2 LLJ 55

Hon'ble Judges : Pius C. Kuriakose, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : U.K. Ramakrishan, for the Appellant; P. Sankarankutty Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Contribution in terms of Employees State Insurance Act was demanded from the appellant on a payment of Rs. 1,22,105.10, which according to the ESI Corporation was the bata paid to the running staff. Bata was a part of wages which attracted contribution. An application was filed before the Insurance Court by the appellant/ employer stating that the bata did not represent the wages. It was an additional remuneration to meet special expenditure. Therefore it came within Clause C of Section 22(c), which is not included in the wages. But the Insurance Court found that the payment so made was based on a settlement dated 28.6.1984 which was also produced before the Court. It was also not disputed by the employer. The settlement provides for separate rate of bata for persons employed as cleaner, conductor and driver and in respect of the distance covered during duty. As the payment was made out of a settlement which forms part of the conditions of service; the E.I. Court found that it did form part of wages and it did attract contribution under the Act. This finding is assailed.

2. The settlement referred to in the judgment impugned is an admitted

document. We have perused the settlement. Clause (1) there of provided for a fixed rate of bata for the employees. Clause (ii) provided for over and above what is paid as per Clause (i), additional bata depending upon the distance covered. There was no evidence on record to show that such payment was to meet any particular incidental expenditure that an employee may incur while on duty. In the absence of such evidence it is impossible for any court to come to the conclusion that it did come within any of the items which are not included in the wages as defined in Section 2(22) of the Employees State Insurance Act, 1948. In such circumstances what we have to apply is the first part of the definition, namely, "wage means all remuneration paid or payable in cash to an employee, if the terms of contract of employment expressed or implied ....". As mentioned already, this is a payment based on a settlement which forms part of the contract of employment. Necessarily, that is a part of the whole wages paid to the workmen concerned. It cannot be termed as an additional remuneration to exclude from the wages, because even if it is an additional remuneration the period of payment is daily and not exceeding 2 months. Therefore even if the contention of the employer that it is an additional remuneration is accepted, depending upon the periodicity of payment it will never go out of the definition of wages going by 2nd part of the definition clause.

3. So far as the 3rd part of definition, which does not include certain items of payment as part of the wage, it has to be proved by the employer that the payment was on account of any of such items. There was no evidence in this regard. Therefore the tribunal was justified in finding that the amount paid formed part of wages to attract contribution.

4. The decision in Regional Director v. Vinod 1991 (2) KLT 138 was also pointed out before us to substantiate that the bata did not form part of the wages. But that does not in any way help the appellant, because it is not discernable from that decision that the item of allowance considered in para 6 there of was something payable out of a settlement which formed part of contract of employment. On the other hand in paras 7 and 8 in respect of a similar bata, the said Division Bench itself has taken it as part of wages.

5. The appeal has therefore to be dismissed. Any how, the appellant will be liable to pay contribution only less what had already been deposited based on an interim order in this appeal, which can be drawn by the respondent Corporation.

Hence the appeal fails and is dismissed. No costs.