
(1991) 07 KL CK 0058
In the High Court Of Kerala
Case No : M.F.A. No. 222 of 1991

E.S.I. Corporation

APPELLANT

Vs

Leela Karunakaran

RESPONDENT

Date of Decision : 16-07-1991

Acts Referred:

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

Citation : (1994) 3 LLJ 640

Hon'ble Judges : Varghese Kalliath, J;Guttal, J

Bench : Division Bench

Advocate : C.S. Rajan, for the Appellant;

Final Decision : Dismissed

Judgement

Varghese Kalliath, J.—The question raised in this appeal is as to the nature of subsistence allowance given to a suspended employee. Appellant submits that the subsistence allowance is also wages within the definition of Section 2(22) of the Employees' State Insurance Act. Section 2(22) of the Employees' State Insurance Act reads thus:-

""Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months but does not include-

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge,"

Subsistence allowance is paid u/s 3 of the Payment of Subsistence Allowance Act. This Act also defines wages. The wages in Payment of Subsistence Allowance Act is more or less identical with the definition of wages in Section 2(22) of the Employees' State Insurance Act. In 1976 K.L.N. 265 (Case No. 223)(Travancore Rayons Ltd. v. Sadasivan Pillai), George Vadakkal, J. very plainly expressed the view that the subsistence allowance is not wages under the Payment of Subsistence Allowance Act.

2. Counsel for the appellant submitted that in order to attract the definition of wages when it is applied to subsistence allowance the first part of the definition has to be complied with. He also agrees that only if the first part of the definition is complied with the subsistence allowance can be considered as wages. The first part of the definition of wages mandates that the wages must be remuneration paid or payable. The width and scope of the word "remuneration" in Section 2(22) of the Employees' State Insurance Act was considered very plainly and clearly by a Division Bench of the Bombay High Court in 1975 LIC 84 (The Assistant Regional Director Incharge, Employees' State Insurance Corporation at Nagpur v. The Model Mills Nagpur Ltd. (U.A.C.) Nagpur and Anr.). In paragraphs 7 and 8, Shah, J. as he then was, considered the question very elaborately. His Lordship has analysed the definition of wages u/s 2(22) of the Employees' State Insurance Act. His Lordship said "This definition consists of three parts. The first part shows that "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled. The second part deals with other additional remuneration, if any, paid at intervals not exceeding two months and this is to be considered as "wages". The last part deals with the negative aspect and expressly states that the items contained in Clauses (a) to (d), will not be included in the term "wages"" Again, Shah, J. closely interpreted the first aspect of the three parts of the first part of the definition. In understanding the first aspect of the first part of the definition, His Lordship said "The question is whether the payments made for the authorised leave or in other words the payments made as leave with wages can be considered to be "wages" as defined in the first part. Even as regards the first part of the definition of "wages" in Section 2(22), three conditions must be satisfied before a payment can be said to be included therein. Firstly, it must be a remuneration; secondly, such remuneration must be paid or payable in cash to the employee, thirdly it must be paid or payable if the terms of the contract or employment, express or implied, were fulfilled. Before amounts paid for the period of authorised leave to an employee could be considered as being included in the definition of "wages", all these three conditions must be satisfied. It must be shown that such payment is by way of remuneration. It must also be shown that the remuneration so paid or is payable in cash and lastly it should be paid or payable if the terms of the contract of employment, were fulfilled". In Bala Subrahmanya Rajaram v. B.C. Patil 1958-I-LLJ-773, the Supreme Court observed "Remuneration is only a more formal version of "payment" and payment is a

recompense for service rendered". It is clear that there must be inter-relation of service rendered for satisfying the first part of the definition.

3. Further it was found that past services rendered or the possibility of rendering future service cannot be taken for the purpose of considering the amounts paid on days of authorised leave to the workers as wages. This decision was upheld by the Supreme Court in Assistant Regional Director Vs. Model Mills Nagpur Ltd.,,

4. In the light of the Supreme Court decision, it is difficult for us to say that subsistence allowance paid is an amount paid for services rendered and so it is remuneration. Of course, counsel for the appellant submitted that this Court had occasion to consider the question of amounts paid during national festival holidays whether wages or not and this Court has held that the amounts paid as holiday wages will come under the definition of wages. In fact, we have doubted the correctness of that decision. Any how, in this case, obviously subsistence allowance is not paid for any services rendered. Whatever be the position, for good reasons, which are legally sustainable, the employee-is refrained from rendering any service to the employer. In such circumstances, it is not possible to say that he is rendering service and so he is receiving remuneration. If he is not receiving remuneration, he is not receiving wages within the meaning of Section 2(22) of the Employees' State Insurance Act.

5. This position was considered by the Karnataka High Court in Employees State Insurance Corporation v. Management of Kirloskar 1985 1 LLJ 173. The court observed that subsistence allowance is not remuneration paid to the employee for having fulfilled the terms of the contract of employment. We respectfully agree with this decision. Of course, counsel submitted before us that master-servant relationship is not terminated and it is kept only in abeyance and only because of the master-servant relationship, the employer is able to give an order preventing him from doing any work by suspending the employee. On this question, there cannot be any dispute, because it has been said so very clearly and plainly by the Supreme Court.

6. Counsel referred us to various decisions on this aspect of the matter. We do not think that those decisions are of much help to the appellant. Counsel has referred to us H.L. Mehra Vs. Union of India (UOI) and Others, to drive home the principle that when an order of suspension is made against a Government servant pending an enquiry into his conduct, the relationship of master and servant does not come to an end. We do not think that the decisions on this point referred to by counsel, need be discussed.

7. In the result, we hold that subsistence allowance is not wages within the meaning of Section 2(22) of the Employees' State Insurance Act and so we find no merit in this appeal. It is only to be dismissed. We do so.