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(2013) 07 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 793 of 1989

Guru Nanak Dev Thermal Plant — APPELLANT

Vs

ESI Corporation and Another — RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(22), 40, 41, 75, 77

Citation : (2013) 172 PLR 161

Hon'ble Judges : Rajan Gupta, J

Bench : Single Bench

Advocate : S.C. Pathela, for the Appellant; Vikas Suri, for the Respondent

Final Decision : Dismissed

Judgement

Rajan Gupta, J.—Appellant has preferred the instant appeal to impugn the order passed by the Authority under the Employees State Insurance Act, 1948 whereby petition filed under sections 75 & 77 of the Act has been dismissed. Learned counsel for the appellant has assailed the order. He submits that appellant was not liable to contribute in terms of section 40 of the Act. According to him, court below has not appreciated the controversy in right perspective. Incentive paid to the employee would not fall within the definition of term wages. Thus, the order directing the appellant to pay contribution in terms of the Act is unsustainable. He has placed reliance on judgment of the apex court reported as Braithwaite and Co. (India) Ltd. Vs. The Employees'' State Insurance Corporation, .

2. Learned counsel for the respondents has opposed the plea. He submits that judgment in Braithwaite case (supra) was delivered prior to amendment carried out in the Act in the year 1966. According to him, definition of term ''Wages'' was amended and pursuant to same incentive allowance also came within the ambit of wages. He has placed reliance on judgment reported as Harihar Polyfibres Vs. Regional Director, ESI Corporation, .

3. I have heard learned counsel for the parties and given careful thought to the

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facts of the case.

4. An order was passed by the Deputy Regional Director under the Employees State Insurance Corporation whereby a demand of Rs. 21033.85/- as contribution on account of payment made to the employees of the petitioner as generation incentive along with interest @ of 6% p.a. was raised. The operative part of the order reads thus:-

For the above reasons, I (B.C. Bhardwaj) Dy. Regional Director in exercise of the powers delegated to me by the Corporation, think fit and accordingly order that contribution totaling Rs. 21033.85/- for the period from 12/85 & 5/86 to 9/86 are finally determined plus interest amounting to Rs. 3029.60 upto 2.8.87 and you as one of the Principal employers are hereby ordered to pay the above amount together with interest payable at the rate of 6% for each day of further default from 3.8.87 till the date of payment within a period of 15 days from the date of this order failing which this shall be caused to be recovered as arrears of Land Revenue.

5. The appellant-Guru Nanak Dev Thermal Plant challenged the aforesaid order before the Employees Insurance Court at Bathinda, its main plea being that generation incentive could not be termed as wages drawn by the employees of the Thermal Plant and remuneration particularly in the nature of incentive could not be said to fall within the ambit of term ''Wages''. Plea was resisted by the respondent-Corporation. According to its stand, competent authority had rightly demanded the recovery from the appellant as incentive allowance would fall within the definition of wages. Admittedly, an amendment was carried out in the Act in the year 1966. After the amendment, Section 2(22) which defines wages reads thus:-

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 authorized 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 traveling allowance or the value of any traveling 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.

6. The apex court held that the Employees State Insurance Act was a welfare legislation and definition of wages was designedly wide. Any ambiguous expression was bound to receive a beneficent construction. After considering the ratio of judgment in Braithwaite case (supra), the apex court held as follows:-

"6. Our attention was also invited to the case of Braithwaite and Co. (India) Ltd. vs. E.S.I. Corporation:" (V. Bhargava and C.A. Vaidialingam, JJ.). The case arose prior to the amendment of the Employees? State Insurance Act in 1966 when the explanation to Section 41 was bodily lifted from Section 41 into the definition of

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''wages'' in Section 2(22). The case related to the payment of an ex gratia reward styled as an ''Inam'' (a bounty) which was admittedly not claimed to be "additional remuneration, if any, paid at intervals not exceeding two months" but claimed to be "remuneration paid or payable to in cash to an employee if the terms of the contract of employment, express or implied was fulfilled" which the Court found it was not. The case has been sufficiently explained by the Full bench of the Andhra Pradesh high Court in E.S.I. Corpn., Hyderabad v. A.P. Paper Mills Ltd. and by the Full Bench of the Karnataka High Court in N.G.E.F. Ltd. vs. Deputy Regional Director, E.S.I.C. Bangalore. We do not think that it is necessary to say anything further in this matter. In this view, the SLP is dismissed.

11. I entirely agree with my learned brother that on a proper interpretation of the term ''wages'' the legislative intent is made manifestly clear that the term ''wages'' as used in the Act will include House Rent Allowance Night Shift Allowance, Heat, Gas and Dust Allowance and Incentive Allowance. The definition, to my mind, on its plain reading is clear and unambiguous. Even if any ambiguity could have been suggested, the expression must be given a liberal interpretation beneficial to the interests of the employees for whose benefit the Employee'' State Insurance Act has been passed.

In view of ratio laid-down aforesaid there can be no dispute about the definition of wages. Even a perusal of the definition clearly shows that same includes additional remuneration as well as remuneration paid or payable to an employee in terms of contract of employment, express or implied. In case the employees worked for increase the generation in view of incentive, there would be an implied contract between the employer and the employee to pay incentive allowance. In such a situation, employee would be entitled to additional remuneration. Same would be covered u/s 2(22) of the Act. No fault can, thus, be found with the order passed by the court below. The appeal is without any merit and is hereby dismissed.

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