

(1991) 08 KL CK 0012
In the High Court Of Kerala
Case No : M.F.A. No. 721 of 1986

Malabar Fruit Products Co.

APPELLANT

Vs

E.S.I. Corpn.

RESPONDENT

Date of Decision : 29-08-1991

Acts Referred:

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

Citation : (1992) 1 ILR (Ker) 60 : (1992) 2 LLJ 786

Hon'ble Judges : Ramakrishnan, J;Radhakrishna Menon, J

Bench : Division Bench

Advocate : M.P. Krishnan Nair, for the Appellant; T. Ravikumar, for the Respondent

Final Decision : Allowed

Judgement

RADHAKRISHNA MENON, J.—The employer within the meaning of the Employees State Insurance Act, for short the Act, is before us. The question for consideration in this appeal is whether the expression "wages" defined by Section 2(22) of The Act includes the "Meals Allowance" the employer paid to the employees during the period in question.

2. The answer to this question depends upon the construction of Section 2(22) which defines "wages". We shall reproduce this definition now;

"2. Definitions:- In this Act, unless there is anything repugnant in the subject or context,--

22. "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;"

3. Before we construe the provision it is profitable to bear in mind that the Act is a welfare legislation and hence the word "wages" has designedly been defined verywidely. That means any ambiguous expression is bound to receive a beneficial construction.

4. It is in this backdrop we have to construe the provision. On a reading of the provisions it can be seen that it consists of three parts: (1) pertaining to remuneration paid or payable under the terms of the contract of employment, express or implied, (2) any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and (3) other additional remuneration, if any, paid at intervals not exceeding two months. To attract the first part mentioned above it should be established that the remuneration is one paid or payable under the terms of the contract of employment and it includes any payment to an employee falling under part (2). To attract the third part it should be shown that the additional remuneration other than the two classes of remuneration mentioned above to "the employee is paid outside the contract of employment and at intervals not exceeding two months. This view, we take, is supported by the decision of the Supreme Court in Harihar Polyfibres Vs. Regional Director, ESI Corporation, .

5. According to the E.S.I. Corporation the "meals allowance" paid to the employees during the period in question in any event falls under the third part mentioned above, and hence wages within the meaning of Section 2(22). Here it is pertinent to note, the Corporation argues, that the payment partakes of the characteristics of wages within the meaning of the Section and hence it cannot be said to come under Clauses (a) to (d) of Section 2(22) as contended for by the contesting parties.

6. The learned counsel for the appellant nonetheless reiterated his argument that the "meals allowance" paid by the employer to the employee under the circumstances must be held to be a payment coming within the meaning of Clause (c) of Section 2(22) and therefore the same cannot be treated as wages. We shall now read Section 2(22)(c):

"any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment".

A reference in this connection to certain admitted facts of the case is relevant. The allowance at the rate of Rs. 5/- per workman per day was paid by the

employer during the period from April 1, 1981 to December 31, 1981.

7. This allowance, it can be presumed, is paid to meet the need to refresh the human body by solid food during working hours. It is to accomplish this object, in our view, law insists that the workmen shall be given intervals during working hours to take food. The circumstances under which this allowance is paid make it clear that the employer wanted to get himself exonerated from the responsibility of the employees being provided with the canteen facilities immediately. The question accordingly is: can this allowance be treated as wages. It should in this connection be remembered that the demand by the authority concerned is to pay the employees' contribution within the meaning of the Act. A reference in this connection to Sub-section (2) of Section 40 of the Act is profitable. This section entails the employer to recover from the employee the employee's contribution by deduction from his wages. The employer, going by the relevant provisions of the Act, has to pay to the Corporation the contribution in respect of the employee from whose "wages" he would deduct the contribution. To put it differently, the contribution an employee shall pay, is being collected through the agency of the employer. The direction to deduct a portion of the "meals allowance" representing part of employees' contribution would mean that some fraction of the meals, the employee could have by spending the money that he would get under the head "meals allowance" would have to be deducted by the employer as employees' contribution. This approach to the issue, if recognised, would bring about ludicrous situation. This shall not happen and in our view to avoid such a situation as stated by the learned Judges of the Punjab & Haryana High Court in *E.S.I. Corporation, Chandigarh v. Gedore Tools India (P) Ltd.* 1987 LAB I.C 570 a liberal interpretation of exclusion clause must necessarily be given as they are beneficial to the interest of the employees for whose benefit the Act had been enacted. We therefore, with respect, are in complete agreement with the following observation of the learned Judges:

"This being a welfare legislation, it also appears to us that the main part of the definition of "wages" has designedly been kept wide and all embracing when it comes to inlets. In the same spirit of welfare of the employee, the latter part also provides liberal exclusions or outlets when the employee need be reimbursed on his entailing special expenses by the nature of his employment".

8. Going by this principle we are of the view that the "meals allowance" paid to the employees is one that falls under Clause (c) of Section 2(22). This payment being in the nature of special expenses cannot be treated as wages within the meaning of the Act.

9. The above position notwithstanding the Employees' Insurance Court, Alleppey has taken the view that the "meals allowance" paid to the employees will be wages within the meaning of Section 2(22) and in respect of which the employees are to pay their contribution. The Court, to substantiate this view, has made reference to two decisions: one of this court in *Carborandum Universal Ltd. v. ESI Corporation* 1975 KLT 842 and the other of the Bombay High Court in

Mahalaxmi Glass Works Private Limited Vs. Employees' State Insurance Corporation, The law stated in those decisions, in the light of the Supreme Court ruling in M/s Harihar Polyfibres (supra), in our view, cannot be said to be good law.

10. The appeal, for the reasons stated above, is allowed.

11. No costs.