

(2001) 12 KAR CK 0045
In the Karnataka High Court
Case No : Writ Petition No. 13649 of 2000

Mangalore Ganesh Beedi Works

APPELLANT

Vs

Assistant Provident Fund Commissioner

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2 (b), 6

Citation : (2002) 2 KCCR 1040 : (2002) 3 LLJ 132

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Shubha Ananth and Kasturi Associates, for the Appellant; Vijay R. Hanumanthgoud, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The petitioner-registered firm has filed this writ petition seeking for issuance of a writ of certiorari to quash the order dated March 9, 2000 produced at Annexure "B" passed by respondent No. 1 in the appeal No. ATGA/6(6)/2000 urging various legal contentions.

2. The subject matter of dispute between the petitioner and the respondent-Provident Fund Commissioner is that provident fund contribution need not be paid taking into consideration the Special Allowance as agreed upon by the petitioner-management with its Mangalore Ganesh Beedi Workers Union and Mangalore Ganesh Beedi Workers and Employees' Association. The settlement dated March 19, 1996 with regard to various conditions of the workmen and employees working in the petitioners' firm are entered by the petitioner and the trade unions of its workmen. Clause 5 of the said settlement deals with regard to Special Allowance agreed to be paid in favour of the employees and workmen by the petitioner employer; whose names are borne on the muster rolls of the establishment and continued to be in service shall be paid Special Allowance every month from April 1, 1996 based on the respective length of service as enumerated under Sub-clause (a), (b), (c) and (d) of Clause 5 of the settlement

referred to above. The submission of special allowance agreed to be paid by the petitioner firm to its employees association cannot be taken into consideration as "basic wages" in terms of Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short "Act") as the Special Allowance is not the basic pay as defined u/s 2(b) read with Section 6 of the said Act. Learned counsel for the petitioner submits that Special Allowances are exempted under Clause (ii) of the definition of Section 2(b) of the Act, as per the said clause of the definition of the Act the special allowance payable to the workmen pursuant to the settlement agreed between the parties is not included in the definition of "basic wages". Therefore the payment of special allowance is not within the inclusive definition of Section 2(b)(ii) of the Act and further the basis of inclusion of special allowance are clearly included u/s 6 of the Act. The special allowance as agreed to be paid to the employees and workmen under Clause 5 of the settlement is not payable by the petitioner firm in all the concerns and it is not earned by all permanent employees to be included in the basic wage for the purpose of contribution to be worked out u/s 6 of the Act. Further it is contended by the learned counsel for the petitioner that whatever is not payable by all the concerns of the petitioner's firm or may not be earned by all employees of concern is excluded for the purpose of payment of provident fund contribution of the employees of the petitioners firm. In support of the said proposition of law, learned counsel Smt. Shubha Ananth placed reliance upon the Constitution Bench of the Supreme Court in Bridge and Roof Co. (India) Ltd. Vs. Union of India (UOI), . Rebutting the said proposition, learned Standing Counsel Smt. Vijay R. Hanumanthgoud on behalf of the respondent placed strong reliance upon the definition of Section 2(b)(ii) read with Section 6 of the Act and justifies the impugned order. The special allowance payable by the management under Clause 5 of the settlement to its employees and workmen shall be taken into consideration for payment of Provident fund contribution to its employees and workmen. Further she has placed reliance upon the judgment of the Apex Court reported in The Daily Partap Vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, wherein the Apex Court after the interpretation of Section 2(b) and Section 6 and also the exception allowance carried out under Sub-clause (ii) to Section 2(b) of the Act, it has held after considering the Judgment of Bridge & Roof Company (India) Ltd. v. Union of India referred to (supra) and other judgments of the Apex Court the term "basic wages" as defined u/s 2(b) of the Act, it must be shown that "the scheme in question to offer production bonus to be in extra output wherein either collectively bonus may be fixed to all of them on the basis of total extra output on a sliding scale or may be given to number of workers by their efforts earn such benefits". With reference to the fact situation of that case, Supreme Court has held that the extra wages payable must be treated as basic wages and she has also further placed reliance upon another judgment of the Supreme Court in Prantiya Vidhyut Mandal Mazdoor Federation Vs. Rajasthan State Electricity Board and others etc. etc., . After interpreting the provisions u/s 2(b) and Section 6 of the Act, in the aforesaid case 4 items have been extracted in the

judgment regarding the expression "basic wages" for the purpose of computation of various components of wages to pay the provident fund contribution amount of its employees to the respondent. The payment of special allowance to its employees and workmen under the settlement referred to supra falls within the definition of basic wages as the same has been expressly spelt out by the Apex Court in the aforesaid case. Therefore learned counsel on behalf of the respondent submitted that the order passed in the appeal by the respondent is in conformity with the provisions of the Act and the law laid down by the Supreme Court and other contended that the law laid down by the Apex Court in the case of Bridge & Roof company (India) Ltd. is explained by the Apex Court in the subsequent judgments referred to (supra) upon which she has placed reliance to sustain the impugned order.

3. With reference to the judgments of the Supreme Court, I have examined the correctness of the legal submission made at the Bar on behalf of the parties to find out and answer whether the impugned order is legal and valid or warrants interference by this Court. The respondent has exercised his appellate power and jurisdiction after considering the legal contentions referred to above urged by the learned counsel in the appeal and he has recorded his finding holding that the special allowance payable to the employees and workmen by the petitioner pursuant to Clause 5 of the settlement is the Special Allowance which falls within the definition of basic wage as defined u/s 2(b) of the Act. The Appellate Authority while recording such a finding has examined and considered the provisions of Section 2(b) and Section 6 of the Act keeping the view the settlement entered between the petitioners firm and the workers union and employees association and placed reliance upon the Judgment reported in Ramanathan Chettiar Jewellers v. Regional Provident Fund Commissioner, Madurai and also Burmah Shell Oil Storage and Distributing Company of India Ltd. Vs. The Regional Provident Fund Commissioner Delhi and Others, and records a finding with reference to the factual aspects of the case and held that the special allowance payable to the employees and the workmen by their employer would be a part of the basic wages in terms of the definition of Section 2(b) of the Act. The said finding is recorded by the Appellate Authority with reference to the law laid down by me Apex Court in the case of Bridge & Roof Company (India) Ltd. v. Union of India and other Judgments referred to (supra) upon which much reliance is placed by the learned counsel on behalf of the respondent. After careful examination of the findings recorded by the respondent-authority with reference to the contentions urged by the petitioners counsel that Court holds that the findings recorded in the impugned order with reasons are in conformity with the definition of Section 2(b) read with Section 6 of the Act and also law laid down by the Apex Court in its Judgments reported in Daily Partap v. Regional Provident Fund Commissioner, Punjab, Haryana, H. P. & Union Territory of Chandigarh wherein the Apex Court after considering Bridge & Roof Company (India) Ltd. v. Union of India, has clearly laid down the law at paras 10, 15, the relevant portions of which are extracted as hereunder:

"10. Therefore, the short question is whether the disputed amounts paid to the workmen employed by the appellants during the relevant time were paid by way of Production Bonus or not. An incidental question will also arise namely, whether in any case the said amount can be said to be covered by the latter part of the exception category (ii) of the definition Section 2(b) being similar allowance payable to the employee in respect of his employment or the work done in such employment. It was submitted that in any case this allowance was paid for the extra work by way of incentive. The aforesaid contention of learned counsel for the appellants will have to be examined in the light of the Production Bonus Scheme in question which has been the Sheet- anchor of the appellant's case for getting out of the sweep of Section 6 read with Section 2(b) of the Act. The said scheme which is identical in nature for both the appellants reads as under:

Production Bonus is paid for the following reasons:

1. Less than the normal number of people doing the normal work of a working shift, in which case the Production Bonus is paid according to the deficiency in the numerical strength of the staff.
2. Extra output given by any workman in any staff. Output of compositors and distributors is measured in terms of column inches of type that of machine men in terms of the speed of the machine and of the process Section in terms of plates and negatives. Allowance is made for delays caused by factors beyond the control of the workmen.

Production Bonus is 11/2 times the normal daily wage. It may be reduced or increased on account of special reasons at the discretion of the management. It is variable from month to month and is apart from the basic wage of the workman."

15. It therefore, becomes clear that in order to become a genuine Production Bonus Scheme so as to get covered by exception (ii) to the definition of "basic wages" as found u/s 2(b) of the Act, it must be shown that the scheme in question seeks to offer production bonus to the workmen concerned who put in extra output wherein collectively bonus be fixed to all of them on the basis of total extra output on a sliding scale or may be paid individually to a given number of workmen who by their own efforts earn such bonus. Thus in each case payment of bonus cannot be a fixed or proven nature having no nexus with the quantity of extra output produced by them. As in the present case the scheme relied on by the appellants does not fulfil this legal test, it does not attract the exception (ii) to Section 2(b). It remains in the realm of basic extra wage. The decision rendered by the learned single Judge of the High Court as confirmed by the Division Bench decision cannot, therefore, be found fault with. The submission of learned counsel for the appellants that in the scheme in question there was no compulsion for the workman to put in extra work and the management could not compel him to do extra work nor can it allege any misconduct on the part of such workman who does not want to do excess work

cannot be of any avail to the learned counsel for the appellants as even if this criteria may be common to the present scheme as well as the genuine Production; Bonus Scheme, the further requirement of the scheme to become a genuine Production Bonus Scheme, namely, that the payment by way of bonus to the concerned eligible workman should vary in production to the extra output put by him beyond the norm of output prescribed for him is conspicuously absent in the present scheme, as seen earlier, and on the other hand this requirement which is the very heart of a genuine Production Bonus Scheme is missing in the present scheme and, therefore, similarity on only one aspect between the genuine production incentive scheme and the present scheme, namely, that the workman could not have been compelled to carry out extra work pales into insignificance on the facts of the present case. Therefore, the second question has to be answered against the appellants and in favour of the respondent".

Further the Apex Court has reiterated in another case Prantiya Vidhyut Mandal Mazdoor Federation v. Rajasthan State Electricity Board and Ors., (supra) the Apex Court after careful interpretation of Section 2(b) and Section 6 of the Act, the expression -"basic wages" has been clearly set down at items I to IV. In view of the law laid down in the aforesaid case, the special allowance agreed to be paid to all employees and workmen under Clause 5 of the settlement by the petitioner's firm will come within the inclusive definition of "basic wage" u/s 2(b) of the Act. Therefore the findings recorded by the Appellate Authority in the impugned order is in conformity with the provisions of the Act and the law laid down by, the Supreme Court and therefore the reasons assigned in the impugned order are legal and valid which does not call for interference by the Courts. The reliance placed upon judgment of Bridge & Roof Company (India) Ltd. and Ors. v. Union of India and Ors. (supra) by the learned counsel for the petitioner is misplaced, having regard to the subsequent pronouncement of the Supreme Court referred to (supra) wherein the law laid down in the said Bridge & Roof Company (India) Ltd. v. Union of India by the Apex Court has explained in the subsequent cases referred to supra upon which learned counsel for the respondent has rightly placed reliance, as the ratio laid down in the said case with all fours applicable to the facts of the case.

4. For the reasons stated, there is no merit in the petition. Petition must fail. Accordingly, petition is dismissed as devoid of merit.