**(2003) 05 RAJ CK 0075**

**In the Rajasthan High Court**

**Case No :** C.M.A. No. 446 of 1997

Modern Threads (I) Ltd. APPELLANT

Vs

Employees' State Insurance Corporation RESPONDENT

**Date of Decision :** 01-05-2003

**Acts Referred:**

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

**Citation :** (2003) 3 LLJ 445

**Hon'ble Judges :** Sunil Kumar Garg, J

**Bench :** Single Bench

**Advocate :** G. Vaishnav, for the Appellant; Sanjeet Purohit, for the Respondent

**Final Decision :** Dismissed

## Judgement

Sunil Kumar Garg, J.—The question of law is whether good-work wages paid to the respondent by the appellant in the present case are wages within the meaning of Section 2(22) of the Employees'' State Insurance Act, 1948 (hereinafter referred to as "the Act of 1948") and if so, the appellant is enjoined to pay contribution under the Act of 1948 or not.

2. This miscellaneous appeal has been filed by the appellant- plaintiff against the judgment and decree dated April 28, 1997 passed by the learned Judge, E.S.I. (CJM), Bhilwara in E.S.I. Case No. 3/95 by which the suit of the appellant-plaintiff was dismissed holding inter- alia that the good-work wages paid to the respondent-defendant by the appellant-plaintiff are wages within the meaning of Section 2(22) of the Act of 1948 and thus, appellant-plaintiff was liable to pay contribution over that good-work wages.

3. It arises in the following circumstances. -

The appellant-plaintiff filed a suit in the Court of E.S.I. (CJM), Bhilwara against the respondent-defendant on November 20, 1995 seeking a decree of declaration that the good-work wages paid by the appellant-plaintiff to the respondent-defendant are not wages within the meaning of Section 2(22) of the Act of 1948 and thus, the appellant-plaintiff was not under an obligation to pay contribution over that good-work wages.

A reply was filed by the respondent-defendant on February 19, 1996 and it was submitted by the respondent- defendant that the good-work wages would be covered by "wages" as defined in Section 2(22) of the Act of 1948 and thus, the appellant- plaintiff was bound to pay contribution over that good-work wages.

The learned Judge, ESI (CJM), Bhilwara framed three issues and the issue No. 3 was to the effect whether on the amount of good-work, liability to pay contribution is there or not and the burden of the issue was placed on the respondent-defendant.

The learned Judge, ESI (CJM), Bhilwara after considering the evidence and material available on record, decided the said issue No. 3 in favour of the respondent-defendant and against the appellant-plaintiff though impugned judgment and decree dated April 28, 1997 holding inter-alia that good-work wages paid by the appellant-plaintiff to the respondent-defendant are wages within the meaning of Section 2(22) of the Act of 1948 and thus, the appellant-plaintiff was liable to pay contribution on good-work wages.

Aggrieved from the said judgment and decree dated April 28, 1997 passed by the learned Judge, ESI (CJM), Bhilwara, the appellant-plaintiff has preferred this appeal.

4. In this appeal, the main contention of the learned counsel for the appellant-plaintiff is that the findings of the learned Judge, ESI (CJM), Bhilwara on issue No. 3 are erroneous one as the good-work wages are not covered by the definition of "wages" as defined in Section 2(22) of the Act of 1948.

5. On the other hand, the learned counsel for the respondent-defendant has supported the impugned judgment and decree dated April 28, 1997. He has further submitted that the good-work wages are wages as defined in Section 2(22) of the Act of 1948.

6. I have heard the learned counsel appearing for the appellant-plaintiff and the learned counsel appearing for the respondent-defendant and gone through the materials available on record.

7. For convenience and to meet out the submission of the learned counsel for the appellant-plaintiff, Section 2(22) of the Act of 1948, where "wages" have been defined, is quoted here:

''"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 found 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."

8. So far as the question whether the over-time wages would come within the definition of wages as defined in Section 2(22) of the Act of 1948 is concerned, there are catena of decisions of various High Courts as well as Hon''ble Supreme Court on that point where it has been held that over-time wages are wages within the meaning of Section 2(22) of the Act of 1948 and the employer is liable to pay contribution for overtime wages also and for that the decision of the Hon''ble Supreme Court in Indian Drugs and Pharmaceuticals Ltd. and Others Vs. Employees'' State Insurance Corporation and Others, may be referred to.

9. In the present case, there is averment in the memo of appeal itself that the payments made by the appellant-plaintiff to the respondent-defendant under the nomenclature of good-work wages were actually overtime wages.

10. When this being the position, the appellant-plaintiff is liable to pay contribution over the good-work wages as already stated above, there is no dispute on the point that the overtime wage would come within the definition of "wages" as defined in Section 2(22) of the Act of 1948.

11. It may further by stated here that whatever the nomenclature is used, but the point is that there is not much difference between good-work wages and overtime wages.

12. The Act of 1948 is a welfare legislation and the definition of "wages" is designedly wide. Any ambiguous expression is of course, bound to receive a beneficent construction by Courts in India. Now, under the definition, first, whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, express or implied is wages, thus, if remuneration is paid in terms of the original contract of employment or in terms of a settlement arrived at between the employer and the employees which by necessary implication becomes part of the contract of employment, it is wages.

13. Therefore, wages as defined includes remuneration paid or payable under the terms of the contract of employment, express or implied but further extends to other additional remuneration.

14. Thus, when an employee has done the extra work and received amount towards the work done for his rendering service, necessarily it would be a wage paid or payable by virtue of the implied contract and the remuneration paid therefore does form part of the wages u/s 2(22) of the Act of 1948.

 

15. Apart, from this, the word "other" appearing at the commencement of the third part of the definition of wages u/s 2(22) indicates that it must be remuneration or additional remuneration other than the remuneration which is referred to in the earlier part of the definition, and thus, the additional remuneration becomes wage by virtue of the third part of the definition of wages u/s 2(22) of the Act of 1948.

16. Thus, it is held that the good-work wages are wages as defined in Section 2(22) of the Act of 1948 and when this being the position, the appellant-plaintiff is liable to pay contribution on the payment of good-work wages and thus, the findings of the learned Judge, ESI (CJM), Bhilwara in this respect on issue No. 3 are correct one and liable to be confirmed.

17. For the reasons stated above, there is no merit in this appeal and the same is liable to be dismissed. Accordingly, this appeal filed by the appellant is dismissed. No order as to costs.

 