(1981) 09 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 2 of 1978

M/s Hyderabad Asbastos Cement Products., Ltd. Ballabgarh APPELLANT

Vs

The Regional Director, E.S.I. Corporation, Chandigarh and others RESPONDENT

Date of Decision : 30-09-1981

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

Citation : (1981) 09 P&H CK 0007

Hon'ble Judges : G.C. Mital, J

Bench : Single Bench

Advocate : M.R. Agnihotri with Mr. V.K. Sharma, for the Appellant; K.L. Kapur, for the Respondent

Final Decision : Allowed

Judgement

G.C. Mital, J.—Whether ''cycle allowance'' and uniform washing allowance would fall within the definition of ''wages'' as contained in section 2(22) of the Employees State Insurance Act, 1948 (hereinafter called the Act) or would fall in the Exception, 1 clauses (b) and (c) appended to the definition, is the sole point for consideration in this appeal ?

2. The Employees State Insurance Corporation raised a demand against M/s Hyderabad Asbestos Cement Products Ltd. Ballabgarh, because the contributions made by the company were found to be short as while assessing the contribution, the company had not included ''cycle allowance'' and uniform ''washing allowance'' in the wages of the employees and the Corporation was of the opinion that ''cycle allowance'' and uniform ''washing allowance'' were part of the wages and on this basis made a demand for the difference of contributions and since there was delay in payment of that amount, interest was added there to. When the recoveries were enforced through the Collector, Gurgaon, the company filed a petition u/s 75 of the Act before the Court and challenged the recovery proceedings. It was pleaded that the ''cycle allowance'' squarely comes

within exception (b) and the uniform washing allowance fell within exception (c) contained in the definition of wages and therefore, could not be termed as wages for the purposes of calculation of contributions payable under the act. The stand was contested by the Corporation-respondent and it was pleaded that they come within the definition of ''wages''. The Court came to the conclusion that they fell within the definition of ''wages'' and in the result dismissed the petition filed by the company. The company has come to this Court in appeal.

3. After hearing the the Learned Counsel for the parties I find that the appeal deserves to succeed. In order to appreciate the rival contentions raised, it will be useful to reproduce the definition of ''wages'' which is as follows:--

2(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 fulfiled 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.

A plain reading of the aforesaid definition would show that all remunerations paid or payable in cash to an employee in terms of the contract of employment will form wages and would include any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and would also include other additional remuneration, if any paid at intervals not exceeding two months. If the definition was to stay up to this place only, then it may have been reasonably argued that the allowances paid in terms of the contract of employment would fall within the term ''wages'' But Parliament in its wisdom has made four exceptions and, therefore, the final interpretation of the term ''wages'' will have to be made after taking into consideration those exceptions. In the present case, we are concerned with exceptions (b) and (c) only. A reading of those two exceptions shows that any travelling allowance or the value of any travelling concession is not to form part of wages and similarly any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment would also not form part of wages. Therefore, if any payments are made which are covered by exceptions (b) and (c) will not form part of wages and if the two allowances which are involved in the present case under these two exceptions then they will not form part of wages, otherwise they would.

4. Exception (b) is in two parts: the first is with regard to travelling allowance and the other is the value of any travelling concession. Cycle allowance would not fall within the travelling allowance. The next question to be considered would be whether it would fall within the second part, namely, the value of any travelling concession. The employees of the Company could be allowed periodical bus or railway concession passes or the equivalent value thereof to enable them to attend the factory of the Company. Such a concession would clearly fall within the second part of exception (b) and would not come within the definition of ''wages'' If instead of giving passes or value of such passes the Company finds that their employees come on bicycles which are to be maintained by the employees and if a small amount of Rs. 2 50 per month is paid to each employee for the maintenance of their bicycles so that they may reach the factory premises in time, I am of the view that it would be a travelling concession which has been allowed to the employees and would clearly fall under the second part of exception (b) and therefore, will not form part of wages. When Parliament has clearly made a provision for excepting travelling concession from the definition of ''wages'' then full meaning has got to be given to it and while doing so I find no escape from the conclusion that the cycle allowance is nothing but a travelling concession and the value of cycle allowance which has been granted to the employees clearly falls in exception (b).

5. Coming to the grant of uniform washing allowance, it will have to be seen as to what is the nature of work of the employees which they have to do. The company''s business is to prepare abasement sheets and for preparation of such a product much quantity of cement is used. The uniforms of the employees get spoiled while working in the factory and if they are paid expenses to get them washed it would be in the nature of payment made to the employees for reimbursing them for the special expenses entailed by the workman by the nature of their employment. The employer itself could get the uniform washed at its own expenses and give washed uniforms to its workmen and if this procedure had been adopted and the expenses were incurred by the employer, then those expenses could not be divided into the number of workmen and the proportionate amount added to the wages of each workmen to come to the conclusion that they would form ''wages'' within the meaning of section 2(22) of the Act because under that definition whatever is paid in cash to an employee under the terms of the contract of employment has to form part of the wages. Instead of adopting the aforesaid course, if the employer finds that on an average about Rs. 2.50 per mensem would be spent by each employee in getting his uniform washed and pays uniform washing allowance, to my mind it will squarely fall within exception (c) and, therefore, will not be treated as part of ''wages''. Accordingly, it is held that the uniform washing allowance at the rate of Rs. 2.50 per mensem, which is being paid by the employer to the employees cannot he added to the wages for calculation of the contributions under the Act.

6. In fairness to the counsel for the Corporation, the main argument raised by him to the effect that since the travelling concession at the rate of Rs. 2.50 per

mensem per permanent employee and washing allowance at the same rate to such employee was being paid on the basis of the settlement arrived at between the employer and the employees therefore, the two payments would come within the definition of ''wages'' as contained in section 2(22) of the Act in as much as these payment would be in terms of the contract of employment deserves to be considered. In support of the argument, reliance was placed on the Full Bench judgements, N.G.E.F. Ltd vs. Deputy Regional Director, E.S.I.C. Bangalore 1980 Lab. I.C. 431, Employees'' State Insurance Corporation, Hyderabad Vs. Andhra Pradesh Paper Mills Ltd., Rajahmundry, . I am of the opinion that the argument has no merit on the facts of the present case. In N.E.G.F. Ltd''s case (supra) a scheme was made on the basis of settlement between the employer and the employees in which it was decided to pay incentive to the employees and the question which arose for consideration under the Act was whether the incentive paid would be part of ''wages'' or not. It was ruled that it would form part of the ''wages''. The payment of incentive is nothing but payment of additional wages over and above which are originally agreed and therefore, would certainly form part of ''wages'' as defined under the Act. The incentive would fall in none of the four exceptions and as such that judgment is clearly distinguishable. As regards A.P. Paper Mill''s case (supra), again there was settlement between the employees under which it was agreed to pay incentive bonus and house rent allowance to the employees It was ruled that both the payments would form part of the wages as defined under the Act. The two payments again do not come within any of the four exceptions and, therefore that case is also distinguishable Like travelling allowance and the travelling concession, it the house rent allowance was also included in exception (b) or had been added specifically in additional except (e), then the same would also not form part of the wages. Since specific exemptions have been provided and house rent allowance was not excluded from the definition of ''wages, therefore, that was rightly included in the definition of ''wages'' by the Andhra Pradesh High Court. Hence, there is no merit in the argument raised by the counsel for the corporation.

7. For the reasons recorded above, this appeal is allowed, the order of the Court below is set aside and it is held that the two payments made to the permanent employee at the ratio of Rs. 2.50 per mensem towards travelling concession and uniform washing allowance would fall within exception (b) and (c), as appended to the definition of ''wages'' contained in section 2(22) of the Act. Since question of substantial importance of some what significance was involved, I leave the parties to bear their own costs.

