

(1991) 08 DEL CK 0021
In the Delhi High Court
Case No : F.A.C. No. 164/1947

M/s. Shouris Duplicators Pvt. Ltd. and Others

APPELLANT

Vs

E.S.I.C.

RESPONDENT

Date of Decision : 20-08-1991

Acts Referred:

Citation : (1991) 45 DLT 333 : (1991) 63 FLR 873 : (1992) 2 LLJ 443

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Judgement

1. The short question to be determined in this appeal filed by the management is whether payments made by the management to its employees under Production Bonus Scheme fails within the definition of "Wages" as defined in the Employees' State Insurance Act, 1948 (for short "the Act") or not.

2. In short, the case of the management is that with the object of inducing workers to achieve more efficiency it introduced a voluntary production scheme with effect from April 1, 1971. The Scheme envisages that on the production in a month which is in excess of the basic production of 125 units the management shall pay production bonus to the employees at Rs. 15/- per unit to the extent of 75 standard units over and above 125 units and for second slab of 100 units it will be Rs. 25/- per unit and for the third slab of 100 units it will be Rs. 35/- per unit; that the amount payable to any one employees is subject to a ceiling of Rs. 100/- per month; that in case of any dispute including the dispute and about quality and standard of the work executed, the decision of the Management will be final and binding on the parties; that there was no contract between the Management and employees regarding the introduction of the said Scheme; that the Scheme was introduced by the Management voluntarily and the Management is entitled to withdraw the same at any time. The Management (states) that the production bonus paid by it to the employees does not amount to wages as defined in the Act and seeks to restrain the respondent Corporation from enforcing its alleged claim for contribution in respect of the amount paid as

production bonus.

3. On the other hand the case of Corporation is that the amount paid as production bonus amounts to payment of additional remuneration to employees and is thus covered by the latter part of the definition of wages as given in the Act.

4. The Management, in this appeal impugns the order of the Employees' State Insurance Court dismissing the petition filed by it u/s 75 of the Act by holding that the payments made by the Management to its employees as Production Bonus amounted to additional remuneration and such payments thus, would be covered by the definition of wages.

5. In order to appreciate the contentions of the parties it would be useful to set out Section 2(22) of the Act which reads as under :-

"Section 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 fulfilled and included any payment to an employer in respect of any period of authorised leave, lockout, 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 the 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 matter of his employment; or

(d) any gratuity payable on discharge.

6. From the above it would be seen that the first part of definition provides that whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, express or implied, is wages. The latter part of the aforesaid definition provides that other additional remuneration, if any, paid at intervals not exceeding two months is also wages. It is not the case of the Corporation that payment made to the employees as production bonus falls under the first part of the definition "Wages". The case of the Corporation is that payment of production bonus amounts to additional remuneration which admittedly has been paid at intervals not exceeding two months and thus it is covered by the aforesaid definition. On the other hand, according to the Management, the question involved in this appeal stands concluded in its favor by a decision of the Supreme Court.

7. In support of the appeal Mr. Dhawan, learned counsel for the appellant, places strong reliance on the decision of the Supreme Court in M/s. Braithwaite and Co. (India) Ltd. v. The Employees' State Insurance Corporation. 1968-I-LLJ-550 and contends that the Production Bonus Scheme in question and the Scheme under

which payment was made to employees by the Management in the case of Braithwaite & Co. in all material particulars, is identical. Counsel submits that in the cited decision the Supreme Court has held that the payment in the case does not fall within the meaning of the definition of "Wages", and thus following decision of the Supreme Court, in the present case, the Employees State Court, in the present case the Employees State Insurance. Judge committed an error in coming to the conclusion that the payment of production bonus falls within the definition of wages. In Braithwaite & Co.'s case the Supreme Court held that the payment of Inam, though remuneration, could not be employment within the meaning of definition of wages as given in the Act. However, the Supreme Court was not considering the question as raised in the present case, namely whether the payment of production bonus amounts to additional remuneration or not and as such the cited decision has no applicability for determining the present controversy. For the same reason the decision of Madras High Court in The Employees' State Insurance Corporation v. E. I. D. Parry (India) Ltd., 1984 Lab IC 122 has no applicability. Mr. Dhawan has also placed reliance on a decision of the Supreme Court in Regional Director, Employees' State Insurance Corporation v. Bata Shoe Co. (P) Ltd. 1980-I-LLJ-138 In the said case, the Supreme Court held that the bonus paid by the Corporation to its employees was in the nature of ex-gratia payment. It is not so in the present case. The Supreme Court also opined that the said bonus was neither in the nature of production of bonus nor incentive bonus and customary bonus nor any statutory bonus. Further in that case, unlike the present case, the bonus was payable "one month after the end of each quarter". In view of these features the Supreme Court held that the bonus, subject matter of that case, did not fall under any category or class mentioned in the definition of "Wages". It was not the case of any of the parties before the Supreme Court in Bata Shoe Co.'s case that the payment of Bonus amounted to additional remuneration and, accordingly, that decision is also of no help in determining the question involved in the present appeal.

8. Section 2(22) which defines "Wages" is in two parts, the first part dealing with the remuneration paid or payable under the terms of the contract of employment, whereas under the second part there is no question of the term of contract of employment - M/s. Mahalaxami Glass Works Pvt. Ltd. v. The Employees' State Insurance Corporation, 1976-2-LLJ-238 The production bonus in question does not fall within the first part of the definition as this bonus cannot be said to have become a term of the contract of employment, express or implied, and was not payable under the term of employment as such. It is also not the case of the Management that the production bonus was paid at intervals exceeding two months. As noticed above also the second part of the definition does not require the payment to be made under the terms of contract of employment. In my view, the production bonus falls within expression "Wages" in as much as it is other additional remuneration which the Management had paid to employees at intervals not exceeding two months though the payment was de hors the terms of the contract of employment. Sh. Bajwa, learned

counsel for the Corporation, rightly relied upon the decision of the Full Bench of Andhra Pradesh High Court in the case of Employees State Insurance Corporation v. Andhra Pradesh Paper Mills Ltd. 1978-1-LLJ-469 holding that the moment you get any additional remuneration other than the remuneration payable under the term of employment and if this additional remuneration is paid at intervals not exceeding two months it becomes wages by virtue of the latter part of the definition of "Wages".

9. The Employees "State Insurance Act is a welfare legislation and the definition of wages is designedly wide other additional remuneration, if any, paid at intervals not exceeding two months is also wages; this is unqualified by any requirement that it should be pursuant to any term of the contract of employment, express or implied - M/s. Harihar Polyfibres v. Regional Directors, ESI Corporation 1984-2-LLJ-475 In Harihar's case the Supreme Court expressed agreement with the opinion of the Full Bench of the Andhra Pradesh High Court, and also said that the Braithwaite Co. 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 in case to an employee if the term of contract of employment, express or implied, was fulfilled, which the court found it was not. In view of the aforesaid discussion the reliance of management in Braithwaite Co.'s case is misconceived.

10. For the aforesaid reasons the appeal is dismissed. In facts and circumstances of the case, the parties are, however, left to bear their own costs.