(1991) 06 KL CK 0041

In the High Court Of Kerala

Case No : M.F.A. No. 485 of 1986

Regional Director — APPELLANT

Vs

Vinod — RESPONDENT

Date of Decision : 10-06-1991

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(22), 2(9)

Citation : (1993) 3 LLJ 258

Hon'ble Judges : Verghese Kalliath, J;Guttal, J

Bench : Division Bench

Advocate : T.P.M. Ibrahim Khan, for the Appellant; T.A. Ramadasan and V. Divakaran Potti, for the Respondent

Final Decision : Allowed

Judgement

G.H. Guttal, J.—The question which arises for consideration in this appeal by the Employees'' State Insurance Corporation of India is whether (i) the payment of daily bhatta to the conductors of the buses and other staff described as "running staff (ii) the incentive allowance paid to such staff and (iii) the payment to the labourers engaged for the maintenance and repairs of the building used by the establishment of the respondent-employer, are "wages" within the meaning of Section 2(22) of the Employees, State Insurance Act, 1948 (hereinafter referred to as the Act). The question arises out of the facts stated in paragraphs 2 and 3 below:

2. The respondent is a company known as C.W.M.S. (P) Limited, engaged in the business of transport of passengers. The appellant is the Employees'' State Insurance Corporation, Trichur, created by the Act. Under the Act, the respondent is liable to pay contribution to the Employees'' State Insurance Fund created under Chapter III of the Act. The employer is, under the Act, liable to contribute to the Employees'' State Insurance Fund. The contribution depends upon and is related to the wages paid to the employees. The respondent made an application No. E.I.C. 3222/1983 to the Em-ployees'' State Insurance Court, Calicut for a

declaration that it is not liable to contribute to the fund, as, according to the three categories of payment referred to in Paragraph No. 1 are not "wages" as defined in Section 2(22) of the Act.

3. The nature of the payment, the status of which is under our consideration may be briefly outlined.

The characteristics of daily allowance are these:

(a) The "running staff consists of conductors of buses and other employees whose duty entails travelling,

(b) During the time and on the days that they perform travelling duties they are paid, per day of such duty the daily allowance,

(c) The purpose of such payment is to enable them to meet the expenses occasioned by the special nature of travelling assignments, such as food, tea, etc.,

(d) This allowance is in addition to the wages payable to them,

(e) The allowance is not paid when the employees do not perform travelling duty. When not engaged in travelling, assignment they are paid the normal wages.

The second category of payment is known as collection allowance or collection bhatta. This allowance is paid as incentive for increasing profits by attracting more passengers, through better service to the passengers and the travelling public.

The third category of payment with which we are concerned is the remuneration paid to the workers engaged in the maintenance and repairs of the building in which the respondent carries on business. The workers are employed by the respondent.

4. The expression "wages" means all remuneration paid or payable in cash and includes, inter alia other additional: remuneration, if any, paid at intervals not exceeding two months. However, the "wages" does not include, any sum paid to the employee, to defray special expenses entailed on him by the nature of his employment 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 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) x x x x x x x

(b) x x x x x x x

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) x x x x x x x

5. The Trial Court has found as a fact that the daily allowance or bhatta is paid for the specific purpose of defraying expenses occasioned by the nature of work. We do not see any reason to interfere with this finding based on testimony of witnesses.

6. The nature of the payment of daily allowance of the "running staff shows that it is intended to be paid for special kind of work and for enabling the employee to meet the expenses occasioned by such work. The employee does not receive the allowance when he performs his normal duty which excludes travelling assignments. In other words, the "nature of the employment" in this case, is travelling assignment involving expenses incidental to the fulfilment of such assignments. The characteristic of the payment is underscored by the fact that when he is not on traveling duty he does not receive the allowance and such allowance is paid in addition to. his normal wages. For all these reasons the sums payable to the running staff as daily bhatta or allowance while on travelling duty, is excluded from the definition of "wages", as this sum falls in the exception created by clause (c) of the definition of "wages" in Section 2(22) of the Act.

7. The payment of money to the employees as'' "collect bhatta" is admittedly incentive allowance. The Trial Court has recorded this admission in these words with regard to collection bhatta "opposite party itself admits that it is an incentive" and that it is paid: in addition to the normal wages. It is called "collection bhatta" because in the words of the respondent''s witness quoted by the Trial Court, it is paid "to increase collection" of money. Whether it constitutes wages has to ; be considered on the basis that the payment is an incentive allowance.

The payments made to employees to increase production are incentive allowances.; The respondent''s business is transport of passengers. Having regard to the nature of this business, increasing the number of passengers travelling by the respondent''s buses, is increase of production. Therefore, the "collection bhatta" is production incentive. In Harihar Polyfibres Vs. Regional Director, ESI Corporation, incentive allowance was held to be part of the wages; within the meaning of Section 2(22) of the Act. The same view was adopted by the Kar-nataka High Court in N.G.E.F. Ltd. N. G.F.F Ltd. v. Dy. Regional Director, E.S.I. C. Bangalore 1980 LIC 431 : AIR 1980 NOC 109.

8. We have therefore no doubt that the allowance given as incentive to production known as ''collection bhatta" paid to the employees in this case is an incentive to production. In view of the two decisions quoted above, we hold that the "collection bhatta", by reason of its being production incentive allowance constitutes wages of the respondent''s employees.

9. The last category of payment to be considered is the payment to the labourers engaged for the work of maintenance and repairs to the building. It is important to note that the labour is employed by the respondent for the propose of repairs

and maintenance of the building in which the business is conducted. These labourers are employed and are paid for the work of maintenance and repairs of the very building, in which the respondent carries on his business. Therefore, these labourers are persons employed "in connection with the work of the establishment" within the meaning of Section 2(9) of the Act. The work of repairs and maintenance of the building has an intrinsic connection with the business carried on by the respondent. Without this building, and its proper maintenance, the respondent''s establishment cannot carry on the business. Therefore, the work for which the labourers are employed is connected with the work of the respondent''s establishment. Again these persons are directly employed by the respondent who is the principal employer, for work which is connected with the work of the establishment. The workers engaged for repairs and maintenance are therefore employees within the meaning of Section 2(9) of the Act. In Vijaya Mohini Mills'' case Regional Director, E.S.I Corporation v. Vijayamohini Mills 1990 I CLR 625 a Division Bench of this Court considered the status of the workers employed in the work of expansion of a new spinning shed and held that the work of additional building required for the expansion of factory was connected with the work of factory. In the present case the work of maintenance and repairs of the building is directly connected with the business of the respondent. Therefore, in our opinion, -the labourers are employees within the meaning of Section 2(9) of the Act. They receive remuneration in exchange of the labour put in by them. We have no doubt that what they receive from the respondent constitute ''wages'' within the meaning of Section 2(22) of the Act.

10. For all these reasons, we allow this appeal insofar as the "collection bhatta" and the payment of wages to the workers engaged in the work of maintenance and repairs of the building are concerned. We dismiss the appeal insofar as the "daily bhatta" paid to the running staff is concerned. No order as to costs.

