

(2002) 01 OHC CK 0016
In the Orissa High Court
Case No : A.H.O. 158 of 1993

Regional Director, E.S.I. Corporation

APPELLANT

Vs

P.B. Gupta

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2002) 93 CLT 495 : (2002) 93 FLR 1147 : (2002) 1 OLR 250

Hon'ble Judges : P.K. Balasubramanyan, C.J.;A.S. Naidu, J

Bench : Division Bench

Advocate : Devananda Misra, Deepak Misra, K.B. Jena, J.N. Das and Govind Das, for the Appellant; J.K. Tripathy, Rabi N. Nayak, S.N. Mishra, Anil Das, P.K. Chand, B.S. Tripathy, P.C. Panda, P. Panda and D.K. Sahoo, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—This matter was listed for orders and on consent of the learned counsel for the parties, it was taken up for final disposal. Both sides were heard in detail.

2. What is challenged in this appeal is the order of the learned Single Judge in M.A. No. 438 of 1990. The question that arose for consideration before the learned Single Judge was, whether "overtime allowance" paid to the employees would be included in the definition of "wages" in Section 2(22) of the Employees State Insurance Act, 1948 for the purpose of the employer's contribution on the same. The learned Single Judge noticed that there was a sharp cleavage of opinion on the question, the High Courts of Calcutta, Karnataka and Rajasthan having taken the view that the said payment would not be included in the definition and the High Courts of Andhra Pradesh, Bombay, Kerala and Delhi having taken a contrary view. The learned Single Judge accepted the view taken by the High Courts of Calcutta, Karnataka and Rajasthan and held that, "overtime allowance" would not be included in the definition of "wages". The view taken by the learned Single Judge is challenged in this appeal.

3. It has become unnecessary to consider the arguments advanced, in view of the fact that this question has been concluded by the decision of the Supreme Court in the case of *Indian Drugs and Pharmaceuticals Ltd. etc. v. Employees' State Insurance Corporation etc.* 1997 XI L L J 700, where in the Supreme Court clearly held that the view taken by the High Courts of Calcutta and Karnataka is unsustainable and the view taken by Bombay, Delhi and Andhra Pradesh High Courts was the correct view and held that over-time wages are "wages" within the meaning of Section 2(22) of the Employees' State Insurance Act, 1948.

4. Though the question raised before us thus stands concluded, learned counsel for the respondent, relying on the decision of the Supreme Court in the case of *Managing Director, ECIL, Hyderabad v. 8. Karunakara* 1994 (I) L L J 162, argued that the law declared by the Supreme Court in *Indian Drugs and Pharmaceutical Ltd. case (supra)* should only be given prospective operation and cannot be applied to the case on hand since the decision was taken prior to the declaration of law-by the Supreme Court.

In *Indian Drugs and Pharmaceutical Ltd. case (supra)*, the Supreme Court has not declared that the law would have only prospective operation unlike in the case of *Managing Director, ECIL, Hyderabad (supra)* wherein their Lordships specifically declared that the ratio of that decision would apply prospectively and only from the date of that decision. The law declared in *Indian Drugs and Pharmaceutical Ltd. case (supra)* is applicable to the present case and we are bound to apply the law laid down by the Supreme Court.

5. It is the settled principle that when a law is declared by the Supreme Court, it is the law as it always was and it does not become law only from the date it was so declared. It is also clear from the decision in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, that it is only within the competence of the Supreme Court to declare the law declared by it to be prospective and that too only on constitutional questions. But the Supreme Court applied the same principle to other statutory interpretations. This can also be seen from paragraph- 37 of the decision in *Managing Director, ECIL, Hyderabad case (supra)*. We are conscious that we have no power to treat a decision of the Supreme Court only to be prospective in operation. We are, therefore, not in a position to accept the arguments advanced by learned counsel for the respondent that the decision in *Indian Drugs and Pharmaceutical Ltd. case (supra)* should not be applied to the case on hand. As far as we know, the High Court does not have the power to declare that any decision would operate only prospectively. The argument of learned counsel for the respondent relying upon paragraph- 44 of the judgment in *Managing Director, EC/L., Hyderabad case (supra)* that the law declared in *Indian Drugs and Pharmaceutical Ltd. case (supra)* cannot be applied to the present case, cannot be accepted since this Court is bound to apply the law declared as law of the land by the Supreme Court, as and when the appeal is taken up for hearing.

6. In that view of the matter, it is not possible to accept the argument that we

should not accept that decision of the Supreme Court relied upon by the learned counsel for the appellant. According to us, as the matter was still pending before us and law has been declared by the Supreme Court which is binding on this Court in view of Article 141 of the Constitution of India.

We, therefore, allow this appeal and set aside the decision of the learned Single Judge in M.A. No. 438 of 1990. In the circumstances, we direct the parties to bear their respective costs.

A.S. Naidu, J.

7. I agree.