

(2014) 10 KL CK 0374
In the High Court Of Kerala
Case No : Ins. App. No. 32 of 2010

Regional Director, E.S.I. Corporation

APPELLANT

Vs

Royal Plastics Industries

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

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

Citation : (2015) 2 ILR 243 : (2015) 2 KHC 195 : (2015) 1 KLJ 770 : (2015) 2 KLT 64 : (2015) LabIC 2001 : (2016) 1 LLN 428 : (2015) LLR 633 : (2015) 4 SCT 89

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : T.D. Rajalakshmy, SC, Advocates for the Appellant; P.V. Baby and A.N. Santhosh, Advocates for the Respondent

Judgement

K.T. Sankaran, J.—The question involved in this appeal is whether travelling allowance paid to an employee as a consolidated amount would constitute "wages" within the meaning of Section 2(22) of the Employees' State Insurance Act, 1948. The Employees' Insurance Court held that it does not form part of wages. The learned counsel for the appellant relied on the decision of a learned Single Judge in Insurance Appeal No. 40 of 2007. In that case, the question which arose for consideration was whether conveyance allowance given to the employees under the terms of the contract of employment becomes part of the wages. Relying on the decision of the Karnataka High Court in *M/s. Rajashree Cement v. Deputy Director (I), E.S.I. Corporation* (2004 LAB 1C 2244), the learned Single Judge held that conveyance allowance given to the employees under the terms of contract would form part and parcel of wages within the meaning of Section 2(22) of the Act and it shall be taken into consideration for the purpose of fixing the ESI contribution. The Karnataka High Court relied on the decision of the Hon'ble Supreme Court in *Harihar Polyfibres Vs. Regional Director, ESI Corporation*, and held that conveyance allowance under the terms of the contract would fall within the term "remuneration" under Section 2(22) of

the E.S.I. Act and therefore it has to be taken into account for the purpose of making contribution.

2. In *Harihar Polyfibres Vs. Regional Director, ESI Corporation*, the question which arose for consideration was whether "House Rent Allowance", "Night Shift Allowance", "Heat, Gas and Dust Allowance" and "Incentive Allowance" would constitute "wages" within the definition of Section 2(22).

3. The Madras High Court in *Management of Oriental Hotels Ltd. Vs. Employees' State Insurance Corporation*, held that in view of the specific exclusion of travelling allowance in the definition of Section 2(22) itself and since conveyance allowance was of the same character as travelling allowance, conveyance allowance would not constitute wages within the definition of Section 2(22). It was held thus:

"8. In so far as the conveyance allowance is concerned, even though it forms part of the wages being the amount payable in terms of the contract of employment, having regard to the settlement and even de hors the settlement, the payment of the amount would fall within the ambit of "additional remuneration". Nevertheless, that amount will have to be excluded having regard to the specific exclusion provided in the definition itself for travelling allowance or the value of any travelling concession. The conveyance allowance paid is in the nature of travelling allowance as the object of that payment is to enable the employee to reach his place of work and to defray a part of the cost incurred on the travel from his place of residence to the place of work. If instead of paying the conveyance allowance, the employer had provided free transport to the employees, the monetary value of that benefit of free travel from his residence to the place of work would not have been capable of being regarded as forming part of the wages. The conveyance allowance paid in cash for the purpose of being utilized on the travel from place of residence to the place of work, is of the same character and there is no reason why it should not be regarded as travelling allowance for the purpose of Section 2(22)(b), of the Employees' State Insurance Act."

4. Another Division Bench of the Madras High Court in *S. Ganesan v. The Regional Director, E.S.I. Corporation* (Civil Miscellaneous Appeal No. 156 of 1996) held that the travelling batta paid to the employees is covered by exclusion Clause (c) of Section 2(22) of the Act and it is outside the scope of "wages".

5. Section 2(22) of the Employees State Insurance Act reads as follows:

"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 authorized 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;

6. The learned counsel for the appellant contended that all remuneration paid or payable in cash to an employee under the terms of contract of employment would constitute "wages" under the first part of the definition of wages, by whatever name it is called. The submission of the learned counsel is that even if a sum is paid to the employee as travelling concession or travelling allowance on a fixed rate as per the terms of the contract of employment, it would constitute "wages" and Clause (b) of Section 2(22) would not apply.

7. Section 2(22) contains three parts: (1) all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled (2) any payment to an employee in respect of any period of authorised leave, lock-out, strike, which is not illegal or lay-off; and (3) other additional remuneration, if any, paid at intervals not exceeding two months. Clauses (a) to (d) of Section 2(22) are in the nature of exception to the main part of the sub-section. Any travelling allowance or the value of any travelling concession would be outside the purview, of the term "wages". We have to go by the plain meaning of the statute, if the meaning is clear and unambiguous. To my mind, Clause (b) is clear and unambiguous. Whether the travelling allowance is paid as part of the contract of employment, or whether it is paid in lump sum or whether it is paid at regular intervals, it would not cease to be, but it would constitute, travelling allowance. It would not cease to be travelling allowance only because it is a fixed sum paid along with the wages, as per the terms of the contract of employment.

8. In Harihar Polyfibres Vs. Regional Director, ESI Corporation, , the Supreme Court held thus:

"However, "wages" does not include any contribution paid by the employer to any pension fund or provident fund, or under the Act, any travelling allowance or the value of any travelling concession, any sum paid to the person employed to defray, special expenses entailed on him by the nature of his employment and any gratuity payable on discharge."

I am of view that in Insurance Appeal No. 40 of 2007, the decision of the Supreme Court in Harihar Polyfibres Vs. Regional Director, ESI Corporation, was not properly taken note of. Moreover, in, Insurance Appeal No. 40 of 2007, the question involved was whether conveyance allowance given to the employees would form part of the wages. Clause (b) of Section 2(22) does not use the expression "conveyance allowance". It is not necessary for the purpose of

disposal of this appeal to consider the question whether conveyance allowance is the same as travelling allowance. There is no dispute that the amount in question in the case on hand Constitutes travelling allowance. Whether it is paid in lump or in installments or as per the terms of the contract, it continues to be travelling allowance and it never ceases to be travelling allowance. I am not inclined to accept the contention of the learned counsel for the appellant that if the traveling allowance is paid in lump along with the salary as per the terms of the contract of employment, it would cease to be the travelling allowance within the meaning of Clause (b) of section 2(22).

For the aforesaid reasons, I do not find any merit in the Insurance Appeal. The Insurance Appeal is accordingly dismissed.