(2004) 02 MAD CK 0044

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 156 of 1996

S. Ganesan Prop. Sonamuthu Roadways APPELLANT

Vs

The Regional Director, E.S.I. Corporation RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 82

Citation : (2004) 101 FLR 850 : (2004) 2 LLJ 650 : (2004) 2 LW 232 : (2004) 2 MLJ 44

Hon'ble Judges : S.R. Singharavelu, J;P. Sathasivam, J

Bench : Division Bench

Advocate : N. Balasubramanian, for the Appellant; Jayakumari, for Radha Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The Civil Miscellaneous Appeal is directed against the order of the learned Principal District Judge, Tirunelveli dated

07.03.1995 made in ESIOP. No. 15 of 1992.

2. The appellant, S. Ganesan, Proprietor of Sonamuthu Roadways, Palayamkottai, aggrieved by the order of the Regional Director, E.S.I.

Corporation, Tallakulam, Madurai dated 04.08.1992, has filed ESIOP.No.15 of 1992 before the District Court, Tirunelveli u/s 75(1) and 77 of

Employees'' State Insurance Act, 1948 (in short ""the E.S.I. Act"").

3. For convenience, we shall refer the parties as arrayed before the Court below.

4. In the order dated 04.08.1992, the respondent directed the petitioner to pay contribution of Rs. 7,739/- with 6% interest per annum for the

period from 01.04.1990 to 29.02.1992 within 15 days from the date of the order, failing which it would be recovered as arrears of land revenue.

According to the petitioner, the respondent while fixing the said amount of Rs.7,739/- payable as contribution, has taken into consideration the

travelling batta paid to the employee. It is the claim of the petitioner that ""travelling batta"" does not come under the definition of sub-clause (c) of

Sub-Section (22) of Section 2 of the E.S.I. Act. In other words, according to the petitioner, contribution is not payable on the travelling batta.

Before the District Court, no oral evidence was let in, however, Exs. P.1 to P.4 were marked on the side of the petitioner and inspection report

was marked as Ex.R.1 on the side of the E.S.I. Corporation. On consideration of the materials, the learned District Judge, after holding that

travelling batta paid to the employees is to be treated as an incentive, dismissed the petition filed by the petitioner. Hence, the present appeal

before this Court.

5. Heard the learned counsel for the appellant as well as respondent.

6. The only point for consideration in this appeal is, whether travelling batta paid to the employees form part of ""wages"" under Sub-Section (22) of

Section 2 of the E.S.I. Act or it is a defray special expenses exempted under Sub-clause (c) of Sub-Section (22) of Section 2 of the Act?

7. There is no dispute that the petitioner establishment is covered under the provisions of E.S.I. Act. On verification of records and enquiry, the

Regional Director, by order dated 04.08.1992, directed the petitioner to pay contribution of Rs. 7,739/-. It is the grievance of the petitioner that

the respondent had taken into consideration the travelling batta paid to the employees, while fixing the said amount. It is the claim of the petitioner

that travelling batta is paid to the employees for tiffen, meals etc., and it is being paid to the running staff to defray special expenses depending on

the nature and time of the said employment. On the other hand, it is the stand of the Regional Director that it is only an incentive and it forms part of

wages as defined u/s 2(22) of the Act. In order to appreciate the rival contention, it is useful to refer ""wages"" as defined u/s 2(22) of the Act.

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 layoff

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;

8. It is the specific claim of the appellant Management that travelling batta is paid to the employee for tiffen, meals etc., and it is being paid to the

running staff to defray special expenses depending on the nature and time of the employment. The learned Principal District Judge though accepted

that certain amounts were paid as travelling batta, after holding that it was only an ""incentive"" and the Management has wrongly treated the said

payment as batta, refused to accept the stand taken by them and confirmed the demand made by the Regional Director.

9. Mr. N. Balasubramanian, the learned counsel appearing for the appellant would contend that travelling batta is being paid to the running staff to

defray the special expenses depending on the nature of their employment and according to him, it will not become wages as per Section 2(22) of

the Act. In support of his claim, he very much relied on the Division Bench decision of Karnataka High Court in the case of M/s. Graphite India

Ltd., vs. E.S.I. Corporation reported in 1992 (2) L.L.J. 125 and another Division Bench decision of Kerala High Court in the case of Malabar

Fruit Products Co., vs. E.S.I. Corporation reported in 1992 (2) L.L.J. 786.

10. Before the Division Bench of Karnataka High Court, scope and ambit of sub-clause (c) of Clause (22) of Section 2 of the Act arose for

consideration. The question before the said Court was, whether ""washing allowance"" paid to the employees is part of wages or for defraying the

expenses? After referring the very same definition ""wages"" and the exclusion clause, particularly sub-clause (c) of Clause (22) of Section 2 of the

Act, the Division Bench has concluded that, any sum paid to the person employed to defray special expenses entailed on him by the nature of his

employment cannot be included in wages. They further held that washing allowance paid under the settlement between employer and employees

could be only for defraying the expenses of washing of dresses or clothes used by each of them when they attend the work. Such allowance would

be a sum paid to the employee employed by principal employer to defray special expenses entailed on employee by the nature of his employment

in the principal employer''s establishment. Accordingly, they held that the monthly washing allowance paid by principal employer squarely falls

under sub-clause (c) of Clause (22) of Section 2 of the E.S.I. Act.

11. In the Division Bench decision of Kerala High Court, the question that was considered is, whether the meals allowance paid to employees is to

defray the special expenses and falls under sub-clause (c) of Clause (22) of Section 2 of the Act. The Division Bench, after referring the judgment

of the Supreme Court in Harihar Polyfibres Vs. Regional Director, ESI Corporation, held that,

8. ... we are of the view that the ''meals allowance'' paid to the employees is one that falls under clause (c) of S.2 (22). This payment being in the

nature of special expenses cannot be treated as wages within the meaning of the Act.

12. Both the above decisions clearly show that any sum paid to the persons employed to defray the special expenses by nature of his employment

cannot be included in wages. The Employees'' State Insurance Act being a welfare legislation, the main part of the definition ""wages"" has

designedly been kept wide and all embracing when it comes to inlets. In the same spirit of welfare of the employees, the latter part of the definition

also provides liberal exclusions or outlets when the employee need be reimbursed on his entailing special expenses by the nature of his

employment. We are of the view that the term travelling batta given to the employees are covered by exclusion Clause (c) Clause (22) of Section 2

of the Act and are outside the scope of wages. The learned Principal District Judge failed to notice that if an employee, namely the driver or

conductor when they are on work, are eligible for batta for that day. From and above, it is clear that this is only the sum paid to the employee to

defray the special expenses entail to him by the nature of employment. As observed earlier, a liberal interpretation of exclusion clause must

necessarily be given as they are beneficial to the interest of the employees for whose benefit the Act had been enacted. The learned District Judge

should have noticed that the travelling batta is for the drivers, conductors who are travelling in the bus and they will be away from Home Town, so

that for their meals and other expenses, the travelling batta was given. That being the case, the learned District Judge should have held that the

travelling batta will not fall under the term ""wages"". Like ""washing allowance"", ""meals allowance"", travelling allowance, i.e., travelling batta payable

to the employees under the settlement could only be for defraying the expenses incurred and would thus false within sub-clause (c) of Clause (22)

of Section 2 of the Act, to defray special expenses entailed on him by nature of employment by the definition of wages.

13. It is also relevant to refer the Division Bench decision of this Court dated 14.11.2000, rendered in LPA.No.50 of 1998, wherein the Division

Bench in the appeal filed by the Management, set aside part of the order of the learned District Judge holding that conveyance allowance also part

of wages on which contributions are payable. The said view supports the stand taken by the appellant.

14. Apart from the legal position, as we interpreted, the learned District Judge should have also noticed that for the period, namely, 1.04.1980 to

26.01.1985, 26.01.1985 to 30.07.1987, after objection by the Management, the Deputy Regional Director, accepting the stand of the

Management, passed an order on 01.08.1989, stating that travelling batta for drivers and conductors will not fall under the term wages. Though

this was pointed out before the learned Judge and copy of the said order was also filed to that effect, unfortunately, the learned Judge committed

an error in rejecting the same. The learned counsel for the appellant has also produced copy of the said order before us, which finds place page 1

of the typed set of papers.

15. In the light of the above discussion, we hold that ""travelling batta"" paid to the drivers and conductors fall under the exclusion clause (c) of sub-

Section (22) of Section 2 of the Employees'' State Insurance Act, 1948. The contrary view arrived at by the learned Principal District Judge is set

aside; civil miscellaneous appeal is allowed. No costs.

