
(1986) 01 BOM CK 0026
In the Bombay High Court
Case No : F.A. No. 235 of 1976

The Employees" State Insurance Corpn. APPELLANT
Vs
Indian Dyestuff Industries Ltd. RESPONDENT

Date of Decision : 27-01-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12)

Citation : (1994) 3 LLJ 1149

Hon'ble Judges : V.V. Vaze, J

Bench : Single Bench

Advocate : Rajan Jaykar, for M.V. Jaykar and Co, for the Appellant; F.O. Damania, instructed by , Amarchand Mangaldas and Hiralal Shroff and Co., for the Respondent

Final Decision : Allowed

Judgement

Vaze, J.—The short point raised in this appeal is whether attendance bonus paid by the management under a scheme wrought by a settlement between the management and the workmen can be called "wages" within the meaning of Clause (22) of Section 2 of the Employees" State Insurance Act, 1948 ("the Act").

2. As a result of a settlement, u/s 2(P) read with Section 18 of the Industrial Disputes Act, between the applicant Company and the Chemical Workers" Union, a scheme of attendance bonus was introduced with effect from 1st January 1968. Such of the workmen who remain present at least on all but one days were eligible to receive one day"s wages per month by way of attendance bonus to be calculated at the end of each quarter. The Employees" State Insurance Corporation ("the Corporation") treated this attendance bonus as "wages" and asked the employer to pay the contribution which stand was negated by the Employees" Insurance Court at Bombay, giving rise to the present appeal.

3. According to Mr. Jaykar, learned Counsel for the appellant, the matter is no

longer *res integra* in view of the decision of the Division Bench of this Court in *Well-man (India) Pvt. Ltd. v. The Employees' State Insurance Corporation* 1983 LabLC 756, in which an identical question as to whether attendance bonus is wages within the meaning of Section 2(22) of the Act has been answered in the affirmative.

4. Mr. Damania on behalf of the Respondents, underscores the fact that admittedly the payment which is an additional remuneration, was made at intervals of more than two months and hence should fall in the ultimate clause of the 1st paragraph of Clause (22) of Section 2 of the Act taking it out of the purview of the definition.

5. According to Mr. Damania, if this bonus is taken to be wages, it will militate against the scheme of the First Schedule to the Act under which a deeming provision is introduced for an employee receiving wages without working by assuming that he would be deemed to have worked for 26, 13, 6 or 1 days or day according as the wage calculation is based on a month, a fortnight, a week or a day respectively. By including the attendance bonus in wages, argues Counsel, this deeming provision will be rendered ineffective and the worker would be deemed to have worked for more than 26 days if he is a monthly wage earner.

6. To my mind, the discrimination on which the Supreme Court ruling" in *Braithwaite and Co. (India) Ltd. Vs. The Employees' State Insurance Corporation*, is based is that in *Braithwaite* the Inam had not become an implied condition of a contract of employment because the employer had a right to withdraw the grant of Inam without assigning any reasons, whereas, in the present case, the scheme of attendance bonus being a part of the settlement between the workers and the management could not be withdrawn or terminated unilaterally. Once this distinction between the Inam Scheme of *Braithwaite* and the attendance bonus scheme worked out by the management and the Union by a settlement is appreciated, it would follow that such a scheme of attendance bonus (which cannot be withdrawn unilaterally by the management) would be deemed to be a "term of contract of employment" within the meaning of expression occurring in the 1st Clause of the definition of "wages" in Section 2(22) of the Act. In this view of the matter, I find that the learned trial Judge was wrong in holding that the attendance bonus is not wages.

7. The appeal therefore succeeds and setting aside the order of the learned Judge of the Employees' Insurance Court at Bombay, it is hereby declared that the attendance bonus paid by the Respondent-employer to their employees is wages within the meaning of Section 2(22) of the Employees' State Insurance Act. Parties to bear their respective costs.