

(2003) 10 KAR CK 0034

In the Karnataka High Court

Case No : W.A. No. 7466 of 2000 (L-PF) c/w etc.

The Manipal Academy of Higher Education and Others

APPELLANT

Vs

The Provident Fund Commissioner, Employees' Provident
Fund Organisation and Another

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2 (b), 6

Citation : (2004) ILR (Kar) 80 : (2004) 1 KCCR 19 SN : (2004) 2 LLJ 35

Hon'ble Judges : P. Vishwanatha Shetty, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : S.N. Murthy and Somashekar, for the Appellant; Nandita Haldipur,
for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Manipal Academy of Higher Education Vs. Provident Fund Commissioner, AIR 2008 SC 1951 : (2008) 3 CLT 70 : (2008) 117 FLR 358 : (2008) 4 JT 31 : (2008) 2 LLJ 666 : (2008) 4 SCALE 53 : (2008) 5 SCC 428 : (2008) 2 SCC(L&S) 114 : (2008) AIRSCW 2216

Vishwanatha Shetty, J.—Since these appeals are directed against the common order made in the Writ Petition, these appeals are heard together and disposed of by this common Order.

2. The Appellant in Writ Appeal No. 7466 of 2000 is the petitioner in Writ Petition No. 37832 of 1999; the Appellant in Writ Appeal No. 7461 of 2000 is the Petitioner in Writ Petition No. 37817 of 1999; the Appellant in Writ Appeal No. 7462 of 2000 is the Petitioner in Writ Petition No. 37818 of 1999; the Appellant in Writ Appeal No. 7463 of 2000 is the Petitioner in Writ Petition No. 37819 of 1999; the Appellant in Writ Appeal No. 7464 of 2000 is the Petitioner in Writ Petition No. 37820 of 1999 and the Appellant in Writ Appeal No. 7465 of 2000 is the Petitioner in Writ Petition No. 37822 of 1999.

3. In these appeals the appellants have called in question the correctness of the Order dated 25th October 2000 made in the Writ Petitions referred to above by the learned Single Judge. In the impugned order the learned Single Judge has set aside the Order dated 25th June 1999 made in cases Nos. ATA/6(21) 99, ATA/6(22) 99, ATA/6(23) 99, ATA/6(24) 99, ATA/6(25) 99, ATA/6(26) 99, a copy of which has been produced as Annexure-B to these Appeals, by the Employees' Provident Fund Appellate Tribunal, [hereinafter referred to as "the Tribunal"] wherein the Tribunal has taken the view that the earned leave encashment is not part of the basic wages.

4. Facts in brief, which may be relevant for disposal of these Appeals, may be stated as hereunder:

The Appellants in all these Appeals are the Units of Manipal Academy of Higher Education, which is covered under Provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 [hereinafter referred to as "the Act"]. The employees of the Appellants were permitted to encash the earned leave available to their credit. However, during the inspection of the establishment of the Appellants, the Enforcement Officer of the 1st respondent found that the appellants had not remitted the Provident Fund contribution on the earned leave encashment paid by the appellants to their employees. This was recorded by the Enforcement Officer and accordingly he directed the appellants to remit their contribution of earned leave encashment paid to their employees. However, since the appellants disputed their liability to remit the Provident Fund contribution in respect of earned leave encashment paid to their employees as directed by the Enquiry Officer, an enquiry was held by the 1st respondent. The 1st respondent, after considering the objections raised by the appellants, by means of his order dated 8th January 1999 held that benefit of earned leave encashment availed of by the employees was part of their basic wages. In the light of the said conclusion, he directed the appellants to remit the amount of Rs. 7,82,507/- (Rupees seven lakhs eighty two thousand five hundred seven only) by means of his communication dated 18th February 1999. Aggrieved by the said order, the appellants filed appeals before the Tribunal. The Tribunal in Order Annexure-B took the view that the leave encashment does not form part of the basic wages; and in the light of the said conclusion, held that it is not permissible for the 1st respondent to insist on the appellants to pay the Provident Fund contribution on leave encashment. As noticed by us earlier, the learned Single Judge in the Writ Petition filed by the 1st respondent set aside the order Annexure-B passed by the Tribunal and passed the impugned Order taking the view that the leave encashment availed of by the employees of the appellants forms part of their basic wages.

5. S.N. Murthy, learned Counsel for the Appellant, challenging the correctness of the impugned order made two submissions. Firstly, he submitted that the conclusion reached by the learned Single judge that the leave encashment availed of by the employees of the appellants forms part of the basic wages is

totally erroneous in law. In this connection, he referred to us Section 2(b) of the Act wherein "basic wages" has been defined. According to the learned Counsel, "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages, in either case in accordance with the terms of contract of employment and which are paid or payable in cash but does not include encashment of earned leave. It is his submissions that if the earned leave encashment is included as part of basic wages, then the provident fund contribution would be for a period of 13 months in a year as against 12 months of working period in an establishment. Secondly, he submitted that in view of Sub-clause (ii) of Section 2(b) of the Act, the earned leave encashment must be treated as an allowance paid to the employees by the employer in respect of their employment or overtime allowance or allowance paid for the work done in such employment and it cannot be treated as basic wages. It is his submission that when the language of the Section is clear and unambiguous, it is not permissible for the Court to give an extended meaning to the basic wages contained in Section 2(b) of the Act and include earned leave encashment as part of basic wages.

6. However, Smt. Nandita Haladipur, learned Counsel appearing for the 1st respondents while strongly supporting the order passed by the learned Single Judge made two submissions. Firstly, she submitted that the encashment of earned leave by the employees of the Appellant, on plain reading of the definition of basic wages, has to be treated only as basic wages and it cannot be treated as one similar to any dearness allowance, commission or bonus or other similar allowance payable by the employer to its employees.

Secondly, she submitted that since the legislation in question being a beneficial legislation made intending to benefit the working class, the said provision has to be interpreted keeping in mind the object of the legislation. In this connection, she referred to us the decision of the Hon'ble Supreme Court in the case of All India Reporter Karamchari Sangh and Others Vs. All India Reporter Limited and Others, and drew our attention to paragraph 19 at page 1331 of the judgment, and also in the case of M/s. Cochin Shipping co. Vs. E.S.I. Corporation, . She also submitted that under similar circumstances while considering the said question, the Bombay High Court in the case of Hindustan Lever Employee's Union Vs. Regional Provident Fund Commissioner and Another, has taken the view that encashment of earned leave amounts to part of basic wages.

7. In the light of the rival submissions made by the learned Counsel appearing for the parties, the only question that would arise for consideration in this appeal is as to whether the encashment of earned leave can be treated as "basic wages" within the meaning of Section 2(b) of the Act?

8. Section 2(b) of the Act, which defines the "basic wages", reads as follows:

"2(b): "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance

with the terms of the contract of employment and which are paid or payable in cash to him, but does not include

"(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payment by whatever name called paid to an employee on account of a raise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer."

From the reading of the definition of "basic wages" extracted above, it is clear that "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages, in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him. It is not in dispute that as per the terms of contract, the employees of the appellants are allowed to encash the unutilized earned leave. Therefore, we are of the considered view, it is a wage paid to the employees for being on duty without utilizing their leave. The contract of employment or the service conditions by which the employees are governed, it is not in dispute, provides for encashment of earned leave. Therefore, there cannot be any doubt that it is an emolument paid to the employees which they earn while on duty.

9. However, the only question is, whether the encashment of earned leave can be treated on par with or similar to any Dearness Allowance or Over-time allowance or bonus, commission or any other similar allowance payable to the employee in respect of his/her employment or work done in such employment in terms of Clause (ii) of Section 2(b) of the Act as contended by Sri Murthy? We are of the view that it is not possible to take the view that the encashment of earned leave by the employees, in terms of the contract of employment, has to be treated on par with payment of Dearness Allowance or payment of Overtime allowance, bonus, commission or any other similar allowance payable to the employee as referred to in Clause (ii) of Section 2(b) of the Act. The encashment of earned leave, in our view, cannot be brought within the purview of several items referred or similar to the similar matters set-out in Clause (ii) of Section 2(b) of the Act to exclude the said payment from purview of "basic wages". We are also unable to accede to the submissions of Sri Murthy that if encashment of earned leave is treated as "basic wages", it would amount to calculating 13 months wages for the purpose of determining the provident fund contribution payable by the employer. The question that is required to be decided is as to whether the encashment of earned leave should be treated as part of "basic wage" or not? The said question cannot be determined on the basis that if the encashment of earned leave is treated as part of "basic wages" it would amount to compelling the employer to contribute provident fund towards 13 months wages. Whether it amounts to 13 months wages or 12 months wages is not the question that is

required to be taken into account while determining the basic wages. The test that is required to be applied while determining the encashment of earned leave amounts to basic wages or not, is with reference to the language employed in Section 2(b) of the Act. Further, it is also necessary to point out that Section 6 of the Act, which provides for provident fund contribution by the employer to the fund does not refer to the payment to be made in terms of the duration during which period the employees work in an establishment. It only speaks of the contribution by the employer and the employees to the fund with reference to the percentage of basic wages. It has to be calculated in terms of the basic wages paid by the employer to its employees. Further, as rightly pointed out by the learned Counsel for the 1st respondent, the Act being a beneficial legislation; and the object of such a legislation being to protect the interest of the working class, if two views are possible to take while interpreting such a legislation, the Court must interpret the provision in furtherance of the object of the legislation. In this connection, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of ALL INDIA REPORTER KARMACHARI SANGH (supra). In the said decision, the Hon'ble Supreme Court, at paragraph 19 has observed as follows:

"The Act in question is a beneficial legislation which is enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments and hence even if it is possible to have two opinions on the construction of the provisions of the Act, the one which advances the object of the Act and is in favour of the employees for whose benefit the Act is passed has to be accepted."

10. Therefore, if the definition of "Basic wage", as provided u/s 2(b) of the Act is interpreted in the light of what is stated above, the only construction that could be placed on the said provision is to include encashment of earned leave by the employees as part of "basic wages". The decision of the Bombay High Court in the case of HINDUSTAN LEAVER EMPLOYEES UNION (supra) relied upon by the Counsel for the Respondent also supports the view we have taken above wherein it is held that the encashment of earned leave is also part of basic wages. In the said judgment the learned Single of the Bombay High Court has observed as follows:

".... However, cash value of any food concession, any dearness allowance, house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employer in respect of his employment or of work done in such employment and any presents made by the employer are specifically excluded. Now, unless the payment falls in any one of these specifically mentioned excepted categories, every emolument which is earned by an employee while on duty or on leave on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him must be included within basic wages. As stated earlier, every employee is entitled to encash leave as per the rules. Thus, the amount is

definitely payable to each of the employees, subject to his satisfying the requirements that he is so entitled for encashment of leave. In view of the definition of "basic wages", if an employee who has earned leave goes on leave, his salary or wages can obviously fall within the terms "basic wages". I see no good ground to hold that in the event of his not availing the leave but encashing it, the amount which he gets in such encashment should be excluded from the basic wages within the definition of "basic wages" as given in Section 2(b) of the Act."

11. Therefore, in the light of what is stated above, we do not find any infirmity in the conclusion reached by the learned Single Judge. Therefore, these appeals are liable to be rejected. Accordingly they are rejected. However, no order is made as to costs.