(2002) 08 KAR CK 0013

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 984 of 2001

The Regional Director, Employees'' State Insurance Corporation	APPELLANT
Vs	
I.T. Solutions (India) Private Limited	RESPONDENT

Date of Decision : 06-08-2002

Acts Referred:
Employees State Insurance Act, 1948 — Section 82 (2)

Citation : (2002) 95 FLR 465 : (2002) ILR (Kar) 4019 : (2002) 5 KarLJ 411 : (2002) 3 LLJ 757

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : V. Narasimha Holla, for the Appellant; B.C. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhakthavatsala, J.—This miscellaneous first appeal is filed u/s 82(2) of the Employees'' State Insurance Act, 1948 directed against order dated 21-12-2000 passed in ESI Application No. 69 of 1999 on the file of the ESI Court (Additional Industrial Tribunal) at Bangalore.

2. For the purpose of convenience and better understanding, the appellant and the respondent are hereinafter referred to as the applicant and respondent-ESI Corporation as arrayed in the Court below.

3. The brief facts of the case leading to the filing of the appeal may be stated as under:

That the applicant filed an application u/s 75 of the Employees'' State Insurance (ESI) Act, 1948 against the respondent-ESI Corporation before the ESI Court at Bangalore praying for the following reliefs.--

(a) to set aside the claim in C-18, dated nil at Document No. 7 to the application;

(b) to order that the amount paid towards books and periodicals under the broad head of Modular Expenses wage as defined u/s 2(22) of the Act; and

(c) to order any other appropriate relief/reliefs that the Court deems appropriate in the matter in the interest of justice and equity.

4. The application filed u/s 75 of the ESI Act was registered as ESI Application No. 69 of 1999 on the file of ESI Court. The case of the applicant as averred in the application is that conveyance wages paid in terms of the contract of employment to its employees forms part and parcel of wages as defined in Section 2(22) of the Act. On the other hand, ESI Corporation entered appearance in the above said case and filed its statement of objections contending that the contention of the applicant that the Modular Expenses viz., conveyance, travelling allowance, allowance for books and periodicals except HRA are wages is not correct and therefore prayed for dismissal of the application.

5. Thus, the bone of contention of the applicant before the Court below was that the conveyance allowance do constitute wages.

6. In view of the pleadings on record, the Court below framed the following issues.--

(i) Whether the applicant proves that the Modular Expenses paid to its employees in the form of conveyance allowance, leave travel allowance are wages and therefore the applicant is not liable to pay contribution on the wages paid to its employees including Modular Expenses?

(ii) Whether the applicant further proves that the notice in C-18, dated nil is not sustainable and liable to be set aside?

(iii) What order?

7. In support of the case, it got examined its Accounts Officer as A.W. 1 and got marked Exs. A. 1 to A. 9. In rebuttal, the Superintendent of respondent-ESI Corporation got himself examined as R.W. 1 and got marked Exs. R. 1 to R. 4. On the basis of the evidence and records, the learned ESI Judge came to the conclusion that travelling allowance, modular expenses paid towards books and periodicals do not form part of wages but held that the conveyance allowance paid to the employees forms part and parcel of wages. Therefore, the Court below set aside Exs. P. 6 and P. 8 and directed the ESI Corporation to calculate the contribution taking into consideration the conveyance allowance and HRA paid to the employees as part of wages by excluding the amounts paid towards travelling allowance, books and periodicals. This is impugned in this appeal.

8. The appellant has urged the following grounds in this appeal.--

(a) that the ESI Court failed to appreciate that the Modular Expenses, which comprised conveyance allowance was a reimbursement per month and falls under exception Section 2(22)(b) of the ESI Act and therefore, it cannot be treated as part of wages for the purpose of determination of coverage of an employee u/s 2(9)(b) of the ESI Act;

(b) that the Court below failed to appreciate that the so-called conveyance allowance was nothing but travelling allowance as defined u/s 2(22)(b) of the ESI Act;

(c) that the Court below failed to appreciate that, the proceedings before it u/s 75 of the Act being original proceedings it ought to have finally disposed off the matter instead of remanding the matter to ESI Corporation for fresh determination.

9. Further, the appellant has raised the following substantial questions of law.--

(i) Whether the Court below ought to have treated the "conveyance allowance" comprised in Modular Expenses as "travelling allowance" or the "value of travelling concession" as defined u/s 2(22)(b) of the ESI Act?

(ii) Whether the Court below ought to have excluded the "travelling allowance", "travelling concession" paid by the respondent under the nomenclature "conveyance allowance" for the purpose of determining (i.e., the crossing of wage ceiling limit) coverage of an employee, as defined u/s 2(9)(b) of the ESI Act?

10. Therefore, the appellant-ESI Corporation has prayed for setting aside the findings of the lower Court insofar as the finding that the conveyance allowance paid by the respondent was a part of the wages of the employees and to direct the ESI Court to dispose off the application holding that the conveyance allowance was not a part of the wage and grant such other relief or reliefs.

11. Heard arguments of the learned Counsels for the appellant and respondent.

12. In view of the submissions made before me, the only substantial question of law that arises for consideration is whether conveyance allowance forms part and parcel of wages within the ambit of Section 2(22) of the ESI Act, 1948.

13. My finding to the above point is in the affirmative for the following reasons:

For the purpose of convenience and immediate reference, Section 2(22) of the ESI Act, 1948 is excerpted herein.--

"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, lockout, 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 Art;

(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".

It is crystal-clear from the above definition of term "wages" that all remunerations paid to an employee in terms of the contract of employment comes within the scope of wages. Merely because Sub-section (22) of Section 2 of the ESI Act excludes any travelling allowance or the value of any travelling concession paid to the person employed, it cannot be said that conveyance allowance should be excluded from the definition of wages. Conveyance allowance is paid every month to every employee, like house rent allowance, in terms of the contract of employment, so as to meet to and fro conveyance expenses; whereas, travelling allowance is paid to the concerned employee when he/she is sent out of station on duty, to meet travelling expenses. It is crystal-clear from the definition of wages under the said Act that conveyance allowance forms part and parcel of wages and therefore the same cannot be excluded. In this regard, I refer to the decision of Hon''ble Supreme Court rendered in Harihar Polyfibres Vs. Regional Director, ESI Corporation, . In the said case, the Supreme Court has held that house rent allowance, night shift allowance, incentive allowance and heat and dust allowance fall within the definition of wages in Section 2(22) of the Act. Therefore, since the applicant-employer is paying a certain fixed amount as conveyance allowance to every employee working in its concern, in terms of contract of employment, there is no impediment to hold that the conveyance allowance forms part and parcel of wages within the definition of Section 2(22) of the Act. Therefore, I answer the point raised by me in the affirmative.

14. I see no infirmity in the impugned order. Hence, I pass the following order.--

The appeal fails and the same is hereby dismissed. No costs.

