Wellman (India) Pvt.Ltd vs Employees State Insurance Corpn on 3 November, 1993

Equivalent citations: 1994 AIR 1037, 1994 SCC (1) 219, AIR 1994 SUPREME COURT 1037, 1994 (1) SCC 219, 1994 AIR SCW 1142, 1994 LAB. I. C. 954, (1994) 1 COMLJ 248, (1993) 6 JT 227 (SC), 1993 (6) JT 227, 1994 (1) LAB LR 1, 1994 BRLJ 84, 1994 SCC (L&S) 504, (1993) 5 SERVLR 793, (1993) 67 FACLR 1208, (1994) 1 SCT 209, (1994) 53 DLT 65, (1994) 84 FJR 38, (1994) 1 LABLJ 545, (1993) 2 LAB LN 645, (1993) 2 CURLR 1161

Author: P.B. Sawant

Bench: P.B. Sawant, Yogeshwar Dayal

PETITIONER:
WELLMAN (INDIA) PVT.LTD.

Vs.

RESPONDENT:
EMPLOYEES STATE INSURANCE CORPN.

DATE OF JUDGMENT03/11/1993

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
YOGESHWAR DAYAL (J)

CITATION:
1994 AIR 1037 1994 SCC (1) 219
JT 1993 (6) 227 1993 SCALE (4)353

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SAWANT, J.- Special leave granted.

2. The appellant-Company filed an application before the Employees' Insurance Court under Section 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the 'Act') against the Employees' State Insurance Corporation (the 'Corporation') for a declaration that the demand of the Corporation of the employees' contribution and the employer's contribution on the payment made under the company's quarterly attendance bonus scheme (the 'Bonus Scheme') was not valid. The Insurance Court allowed the said application and against that decision the Corporation preferred an appeal to the High Court. The learned Single Judge reversed the decision of the Insurance Court holding that the attendance bonus was payable under the terms of the contract and, therefore, was "wages" within the meaning of Section 2(22) of the Act. In the Letters Patent Appeal preferred by the appellant, the Division Bench of the High Court confirmed the said decision. Hence the present appeal.

3. To appreciate the controversy between the parties, it is necessary to understand the salient features of the Bonus Scheme. The Bonus Scheme was a part of a settlement entered into between the appellant-employer and the union of workmen in 1966. According to this scheme which was introduced w.e.f. July 1, 1966, if a worker is present for all the working days during a quarter, he is entitled to attendance bonus equivalent to four days' wages. If he remains absent for one day in a quarter, he is to be paid attendance bonus equivalent to two days' wages for the first four quarters. If he is absent for two days in a quarter, he is entitled to attendance bonus equivalent to one day's wages in that quarter. If a worker is absent for more than two days during a quarter, he is not entitled to any attendance bonus in that quarter. For the purpose of attendance bonus, the quarters prescribed are April-June, July-September, October- December and January-March. If a worker is newly appointed in the middle of the quarter he is not entitled to attendance bonus for the relevant quarter. The attendance bonus is to be paid in the month following each year. For entitlement to the attendance bonus, further, casual leave or any kind of leave is to be treated as absence. Only privileged leave taken in a single quarter is to be treated as presence in that quarter.

4. For our purpose, what is necessary to note is that a settlement was arrived at in the course of the conciliation proceedings before the Conciliation Officer under Section 12(3) of the Industrial Disputes Act, 1947 (the 'ID Act'). It was, therefore, binding on all parties to the dispute as well as the successors and assignees of the appellant and the subsequently employed workmen under Section 18(3) of that Act. The settlement could not be put an end to by any of the parties unilaterally. In other words, the Bonus Scheme had become an express contract of employment since the date of the settlement.

5. In the light of this legal status of the Bonus Scheme, we have to examine the relevant provisions of the present Act. Sub-section (22) of Section 2 of the Act defines "wages" as follows:

> "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 Jay-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. Sub-section (23) of Section 2 defines "wage period" in relation to an employee to mean "the period in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise".

7. Section 39 of the Act deals with contributions to be paid by the employer and the employee. Section 40 provides for payment of contribution by the principal employer in the first instance. Relevant provisions of the said sections read as under:

"39. Contributions.- (1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and distribution payable by the employee (hereinafter referred to as the employees' contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at such rates as may be prescribed by the Central Government:

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989.

(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.

(4) The contributions payable' in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period the contributions shall fall due on such days as may be specified in the regulations. (5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent, per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause

(a) may be recovered as an arrear of land revenue or under Section 45-C to Section 45-1.

40. Principal employer to pay contribution in the first instance.-

(1) The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder, the principal employer shall in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period."

8. The controversy in the present case centres round the question as to whether the attendance bonus in question is remuneration within the ? meaning of the first part of the definition of "wages" or is "other additional remuneration"

within the meaning of the second part of the said definition given in Section 2(22) of the Act. If it falls within the first part of the definition, the appellant's case must fail. However, if it is "other additional remuneration", the appellant has also to prove that it is not paid under the contract and that it is paid at intervals not exceeding two months. In other words, if the interval of payment of the additional remuneration is more than two months, it would not be "wages" within the meaning of the said definition.

9. Shri Goswami, appearing for the appellant relied upon two decisions of this Court in support of his contention that attendance bonus is not wages. In Bala Subrahmanya Rajaram v. B.C. Patill what fell for consideration was whether the bonus awarded by the Industrial Court was wages within the meaning of that word under the Payment of Wages Act, 1936. There the definition of "wages" leaving aside the part of the definition which is not material, read as follows:

"Wages' means all remuneration ... which would, if the terms of the contract of employment, express or implied, were fulfilled, be 1 1958 SCR 1504: AIR 1958 SC 518

> :(1958) 1 LLJ 773 payable, whether conditionally upon regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of this employment or of work done in such employment and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include.....
>
> The Court held that the bonus awarded by the Industrial Court was not in terms of a contract of employment but as a result of an industrial dispute raised by the workmen. It would not fall within the definition of "wages" under that Act.

10. In Harihar Polyfibres v. Regional Director, ESI Corpn.2 the very definition of "wages" under Section 2(22) of the present Act fell for consideration and it was held that the word "remuneration" occurring in the context of the words "other additional remuneration" need not be under the contract of employment and that such remuneration would include house rent allowance, night-shift allowance, incentive allowance and heat, gas and dust allowance. In this context, the Court held that the Act is a welfare legislation and the definition of "wages" is designedly wide. Any ambiguous expression should receive a beneficial construction under the definition. Here again, what fell for consideration was whether the said allowances were "other additional remuneration" and whether such additional remuneration had to be a part of the contract of employment. The Court held that the said allowances were other additional remuneration and that such additional remuneration need not be a term of the contract of employment.

11. Shri Salve, learned counsel appearing for the Corporation, on the other hand, relied upon Bridge and Roof Co. (India) Ltd. v. Union of India' where the question which fell for consideration was whether,the production bonus paid by the company could be taken into consideration in calculating the contribution under Section 6 of the Employees' Provident Fund Act, 1952. The definition of "basic wages" under Section 2(b) of that Act was as follows:

> " basic wages' means all emoluments which are earned by an employee while on duty or on leave with wages 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 payments by whatever name called paid to an employee on account of a rise 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;

2 (1984) 4 SCC 324: 1984 SCC (L&S) 747 3 (1963) 3 SCR 978 : AIR 1963 SC 1474: (1962) 2 LLJ 490

(iii) any presents made by the employer;"

12. It would thus be apparent from the above definition that "bonus" without any qualification was expressly excepted from the term "basic wages". It was argued on behalf of the company that in view of the unqualified use of the word bonus, all kinds of bonus including production bonus were excluded from the said definition and hence production bonus could not be taken into consideration for calculating the contribution. The Court accepted the said contention and set aside the decision of the Central Government that Provident Fund contribution must also be made on the production bonus.

13. In Jay Engineering Works Ltd. v. Union of India' which was also relied upon by Shri Salve, again the definition of the term "basic wages" under Section 2(b) of the Employees Provident Funds Act fell for consideration in the context of a peculiar production bonus scheme. Under the scheme, a certain proportion of the production was taken to correspond to the minimum basic wages and dearness allowance fixed by the awards and this was termed as "quota". The production above the quota was paid at piece-rates. There was also a norm fixed which was much higher than the quota. Every workman who failed to produce the norm was to be considered as guilty of misconduct and liable to be dismissed. The company relying upon the decision of this Court in Bridge and Roof Co. case3 contended that the entire payment for production above the quota was payment of production bonus and, therefore, could not be taken into account for the purposes of contribution to Provident Fund. It was also contended that even if the payment for such production was not production bonus, it should be treated as payment in the nature of "other similar allowance" appearing in the said definition of "basic wages". The Court held that the real base or standard of production was the norm and any payment above the norm would be real production bonus and any payment up to the norm was "basic wages" for the purposes of the Act and that the payment made above the norm would alone be production bonus and would not be available for calculating the contribution to the Provident Fund.

14. As pointed out above, the attendance bonus payable to the employees is under the terms of the settlement which has become a part of the contract of employment. Hence the said bonus will fall within the first part of the definition of "wages" under Section 2(22) of the Act which covers all remuneration paid or payable in cash to an employee if the terms of contract of employment, express or implied, were fulfilled. It is, therefore, really not necessary for us to consider whether it will be "other additional remuneration"

and if so whether further it will be excluded from the definition of "wages" because it is not payable within a period of two months from the date it is due. However, if it is necessary to express our view on the point, according to us, the expression "other additional 4 (1963) 3 SCR 995 : AIR 1963 SC 1480 :(1963) 2 LLJ 72 remuneration, if any, paid..... implies that the said remuneration is not payable under any contract of employment, express or implied. This is so because while the first part of the definition refers to remuneration under the contract of employment, the second part does not

refer to remuneration under any such contract. Secondly, the definition is inclusive and includes only such payments outside the contract as are mentioned in its second part and none other. Thirdly, the expression "if any, paid" after the words "other additional remuneration" will be inconsistent if the remuneration is payable under the contract of employment since such payment is not dependent on the will of the employer but on the fulfilment of the terms of the contract. Lastly, the second part of the definition includes only such contractual payments as are specifically mentioned therein and the exclusionary part does not include the attendance bonus like the present which is payable as stated above under a contract. Hence the expression "other additional remuneration, if any, paid" not only does not refer to remuneration payable under any contract but refers to such remuneration which is payable at the will of the employer. Every remuneration that is payable under the contract would, therefore, fall under the first part of the definition.

15. For the above reasons, we agree with the conclusion of the High Court and dismiss the appeal with costs.