IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-982-1996 (O&M)
Date of Decision : 26.03.2018

Employees State Insurance Corporation ...... Appellant

Versus

M/s Escorts Tractors Limited ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Vikas Suri, Sr. Standing Counsel for the appellant.

Mr. N.B. Joshi, Advocate and Mr. Ashwani Bakshi, Advocate for the respondent.

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AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment and order dated 13.09.1995 passed by the Employees State Insurance Court, Faridabad whereby it has included the component of conveyance allowance into the umbrella 'expression wages'.

Brief facts of the case are that during the check period of September 1984 to December, 1985, it was noticed that certain employees had been excluded from the ESI Act by including the conveyance allowance into their wages as a result of which their salaries became higher than the wage limit prescribed for the ESI Act. In appeal that inclusion has been challenged.

It is the contention of the counsel appearing on behalf of the appellant is that sub-clause (b) of sub-section (22) of Section 2 of the ESI

Act clearly omits excludes the component of travelling allowance. The sub-clause (b) of sub-section (22) of Section 2 of the ESI Act is reproduced herein below:-

> *"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 other additional remuneration, if any, but does not include :*
> *(b) any travelling allowance or the value of any travelling concession;"*

A perusal of that clearly indicates that conveyance allowance cannot be taken to be wages since it is a payment of compensatory nature to compensate the employees for their travel expenses to and fro of their place of work. Reference may be made to the judgment of the ***Madras High Court,*** in the matter of ***Regional Director, Employees' State Insurance Corporation vs. Sundaram Clayton Ltd. Moppet Division (Regd. Office) Madras and others, 2004(2) LLJ 30***.

Counsel for the respondent has however argued that this payment has been made pursuant to tripartite settlement between the management, union and the labour, and had been in operation since 1981.

A similar issue came up before the ***Andhra Pradesh High Court,*** in the matter of ***Sirpur Paper Mills Limited vs. Employees State Insurance Corporation, 2012(2) LLJ 341***, wherein the learned Single Judge held that when the statute without any ambiguity and without any restrictions or limitations excludes travelling allowance from the definition of wages; in other words, when the exclusion of it is complete, any attempt to draw different inference is not permissible.

Counsel for the respondent has relied upon the judgment of the Supreme Court in the matter of ***Harihar Polyfibres vs. The Regional, Director, ESI Corporation, 1984 AIR 1680***. A perusal of that judgment reveals that Their Lordships had specifically considered whether House Rent Allowance, Night Shift Allowance, Heat, Gas and Dust Allowance and Incentive Allowance fell within the expression of 'wages' and the Supreme Court held that these allowances fell within the umbrella expression 'wages'. It is the contention of the counsel for the respondent that the said allowances discussed in this judgment are similar to travelling allowance and consequently it should be included in wages.

In my opinion, this argument would not cut any ice in view of the explicit exclusion given in the ESI Act as mentioned above. Consequently, the appeal is allowed. It is held that the travelling allowance has to be excluded from the umbrella expression 'wages'.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

March 26, 2018
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No