

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A. No. 1574 of 2005

The Regional Director,
Employees State Insurance Corporation Ltd.,
No. 143, Sterling Road,
Chennai - 600 034. Appellant

Vs

M/s. Lakshmi Saraswathi Cotton Mills,
Thiruchengode by M. Udhayakumar,
General Manager. Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 82 of ESI Act, 1948, to set aside the order of the Labour Judge, Salem in E.S.I.O.P. No.45 of 2000 dated 29.09.2004.

For Appellant : Mr. C.V.Ramachandramurthy

For Respondent : Not ready in notice

JUDGMENT

The present Civil Miscellaneous Appeal has been filed under Section 82 of ESI Act, 1948, against the Judgment and decree of the Labour Judge, Salem in E.S.I.O.P. No.45 of 2000 dated 29.09.2004.

2. The learned counsel for the appellant is present. There is no representation on behalf of the respondent though the name of the counsel for the respondent is printed in the cause list.

3. Heard, the learned counsel for the appellant.

4. The only issue that survive for consideration in the present appeal is whether the finding of the Tribunal that interim payment given by the respondent company to its employer are not wages contracting contribution under Section 2(22) of the ESIC Act, 1948.

(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 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 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;

5. The lower Court by the impugned order dated 29.09.2004 in E.S.I.O.P. NO. 45 of 2000 has concluded that interim payments made under 10 (B) of the ID act, 1947 being ex-gratia would not come within the purview of the Provisions of ESIC act, 1948.

6. The lower Court has relied upon the decision of the Court in the case of Dalmia Cement Bharath Limited Vs The Regional Provident Fund, 1998(3)LLN 402. It is clear that ex-gratia payments do not call for contribution under the ESI Act.

7. The learned counsel for the appellant had relied upon the decision of the Honourable Supreme Court in the case of Employees State Insurance Corporation Vs Gnanambigai Mills Ltd., (2005) 6 SCC 67. The Court has observed the said decision also arose from the decision of this Court rendered on 07.08.2002. Under somewhat similar circumstances the Court held as under:

"In our view the High Court has gone completely wrong in concluding that by virtue of the Award it ceases to be wages. As stated above, the Tribunal has not applied its mind as to whether or not the payments were wages. All that the Tribunal did was to give its imprimatur to a compromise between the parties. Merely because the parties in their compromise chose to term the payment as 'ex-gratia payments' does not mean that those payments cease to be wages if they were otherwise wages. As stated above, they were wages at the time that they were paid. They did not cease to be wages after the Award merely because the terms of compromise termed them as 'ex-gratia payment'. We are therefore

unable to accept the reasoning of the Judgments of the High Court. The Judgment of the Division Bench as well as that of the Single Judge accordingly stand set aside. It is held that the amounts paid are wages and contribution will have to be made on those amounts also. We, however, make it clear that payments of the interest will be as per the statutory provisions."

From the facts of the case narrated, I am of the view that the issue is squarely covered by the above passage of the Honourable Supreme Court.

8. In the light of the above, substantial questions of law raised in this appeal are answered in favour of the appellant. Accordingly, this civil miscellaneous appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

arb

To

- 1.The Labour Judge, Salem.
2. The Section Officer,
Vernacular Section,
Madras High Court.

AD(CO)
CSR: 07.02.2020

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