



C.M.A.(MD).No.1220 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1220 of 2013

1. The Joint Director,
Employees State Insurance Corporation,
Sub-Regional Office,
Tallakulam,
Madurai – 625 002.

2. The Recovery Officer,
Employees State Insurance Corporation,
Sub Regional Office,
Tallakulam,
Madurai – 600 002.

... Appellants/Respondents

-vs-

M/s.Sivakumar Spinning Mills Private Ltd.,
Sankarnagar – 627 357,
Represented by its
Managing Director.

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the order dated 19.06.2012, in E.S.I.O.P.No.25 of 1995, on the file of the Labour Court, (Employees' State Insurance Court), Madurai.

For Appellants : Mr.P.Ganapathisamy

For Respondent : Mr.M.Jerin Mathew



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the E.S.I. Corporation challenging the order passed by the Labour Court, (Employees' State Insurance Court), Madurai in E.S.I.O.P.No.25 of 1995, wherein, the labour Court has set aside the order of the Corporation on the ground that the contribution cannot be demanded for the interim relief that was paid to the employees.

2. There is no dispute that the respondent/employer is covered under the E.S.I.Act. On 13.06.1995, an order was passed under Section 45-A of the E.S.I.Act, calling upon the employer to pay a sum of Rs.17,794/- (Rupees Seventeen Thousand Seven Hundred and Ninety Four only) as contribution for the period covering from April 1992 to march 1994 on the ground that the interim relief that was granted to the employees by way of settlement between the Management and the Trade Union, was not taken into consideration as wages by the Management. This order was under challenged by the employer by filing E.S.I.O.P.No.25 of 1995.



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3. It was the contention of the Management that the interim relief granted to the employees cannot be deemed to be wages as contemplated under Section 2(22) of the E.S.I. Act and therefore, the question of payment of contribution for the above said amount would not arise.

4. The E.S.I. Corporation had filed a counter contending that the interim relief is, in effect wages and therefore, the contribution demanded by the Corporation would certainly fall under the omitted wages for the said period and the employer is liable to pay the contribution amount.

5. The Labour Court, after considering the oral and documentary evidence, and relying upon the judgment of the Hon'ble Division Bench of our High Court *reported in (2003) 1 LW 210 (Employees State Insurance Corporation vs. The Narasimha Mills Limited, Narasimha Naicken Palayam, Coimbatore)* arrived at a conclusion that the interim relief granted to the employee would not fall within the definition of the wages under Section 2(22) of the E.S.I. Act and allowed the petition filed by the employer.



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This order is under challenge in the present appeal filed by the E.S.I. Corporation. The appeal has been filed by raising the following substantial questions of law:

(i) Whether the Trial Court can go against the law laid down by the Supreme Court under Article 141 of the Constitution of India?.

(ii) Whether the Trial Court is justified in giving restricted meaning to third clause of Section 2(22) of the said Act?.

(iii) Whether the employer and workers can make a contract to exclude certain payments from the purview of 'wages' as defined under Section 2(22) of the said Act?.

(iv) Whether the interim relief is not 'wages' under the Section 2(22) of the said Act?.

6. The learned counsel appearing for the appellants had brought to the notice of this Court, the judgment of the Hon'ble Supreme Court reported in **(2005) 6 SCC 67 (ESIC Vs. Gnanambigai Mills Ltd.,)** before this Court, wherein the Hon'ble Supreme Court has reversed the judgment of the Hon'ble Division Bench of our High Court and has proceeded to hold that the 'ex gratia payments' made by the employer would certainly fall within the



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definition of wages as contemplated under Section 2(22) of the E.S.I.Act.

7. The learned counsel for the appellants also relied upon another Supreme Court judgment reported in **2017 (4) LLN 10 (SC) (ESIC Vs. Mangalam Publications (I) Ltd.,)** and contended that the ex gratia payments made were “wages” as defined under Section 2(22) of the E.S.I.Act. Hence, he prayed for the appeal may be allowed.

8. Per contra, the learned counsel appearing for the respondent had contended that the labour Court, after considering the factual issues arrived at a finding that the interim relief/ex gratia payment does not fall within the definition of the wages. According to him, the said amount was paid only as a one time measure and therefore, it is not fall within definition of wages. Hence he prayed for sustaining the order passed by the labour Court.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.



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10. The contention of the parties before the labour Court clearly indicates that interim relief was awarded to the employees working in the respondent Mill for the period between April 1992 and March 1994, on the basis of the G.O.(D) Nos.1254, dated 14.12.1992 and 1282, dated 20.12.1992. Therefore, it is clear that the ex gratia payments is not a one time measure but the payments were made on a monthly basis. Therefore, the contention of the respondent/employer that it is a one time measure, is not factually correct.

11. The Hon'ble Supreme Court while reversing the judgment of the Hon'ble Division Bench of our High Court categorically held that in judgment reported in *(2005) 6 SCC 67 (ESIC Vs. Gnanambigai Mills Ltd.)*, ex gratia payment would certainly fall within the definition of wages under Section 2(22) of the E.S.I. Act. Therefore, this Court is of the considered opinion that the Labour Court has arrived at an erroneous finding that the ex gratia payment would not fall within the definition of wages.

12. In view of the above said deliberations, all the substantial questions of law are answered in favour of the appellants. Accordingly, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.



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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Labour Court,
(Employees' State Insurance Court),
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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