



C.M.A(MD)No.330 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 12.07.2023

Pronounced On : 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.330 of 2020

Employees State Insurance Corporation (SRO),
4th Main Road,
K.K.Nagar, Madurai – 20,
Rep.by its Deputy Director. : Appellant / Respondent

Vs.

M/s.Sri Matha Spining Mills Pvt, Ltd.,
Lakshmanapatti, Kalanampatti,
Dindigul District,
Rep.by its Director. : Respondent/ Petitioner

PRAYER:- Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Act 1948, to call for the records relating to the fair order and Ex-Order dated 20.02.2020 passed by the Hon'ble E.S.I Judge, E.S.I Court (Labour Court) Madurai in E.S.I.O.P.No.54 of 2012 and set aside the same.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.K.Hema Karthikeyan



C.M.A(MD)No.330 of 2020

WEB COPY

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed in E.S.I.O.P.No.54 of 2012, dated 20.02.2020 on the file of the Employees' State Insurance Court (Labour Court), Madurai.

2. For the sake of convenience and brevity, the parties herein after will be referred as per their ranking/status before the ESI Court.

3. It is not in dispute that the Social Security Officer attached to the respondent, inspected the petitioner's Mill on 16.06.2011 and 17.06.2011; that on the basis of the report filed by the Social Security Officer, the respondent has issued a notice in Form C-18, dated 07.07.2011 proposing to levy E.S.I., contribution at Rs.51,66,359/- and that after the personal hearing and after receipt of written representation from the employer and on perusing the records produced by them, the respondent has passed an order, dated 13.06.2012 under Section 45-A of the Employees' Insurance Act Act, determining the contribution payable at Rs.4,04,335/-. Aggrieved by the said order passed under Section 45-A



C.M.A(MD)No.330 of 2020

of the ESI Act, the employer has filed a petition under Section 75(i)(g) of ESI Act, before the E.S.I, Court (Labour Court) Madurai.

4. The respondent has filed their reply statement.

5. During enquiry, the petitioner's Human Resources Manager Tr.R.Saravanan, has been examined as P.W.1 and exhibited nine documents as Ex.P.1 and Ex.P.9. The respondent has examined their Social Security Officer Thiru.G.Rajendran as R.W.1 and exhibited one document as Ex.R.1. The learned E.S.I., Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 20.02.2020, allowed the petition and thereby setting aside the order dated 13.06.2012 passed under Section 45-A of E.S.I., Act. Aggrieved by the said order, the respondent Corporation has preferred the present appeal.

6. At the time of admission, the following Substantial Questions of law were framed :

(i) Whether any payment made under the head of “Travelling/Conveyance Allowance” and “Tiffin/Meals Allowance” is excluded from the definition of Wages



C.M.A(MD)No.330 of 2020

WEB COPY

prescribed under Section 2(22) of the ESI Act even in the absence of materials to substantiate that they were paid towards the actual expenses incurred under the said heads ?

(ii) Whether the burden lies upon the employer to show that monthly payments made under the heads of “Travelling/Conveyance Allowance” and “Tiffin/Meals Allowance” are paid towards actual expenses incurred by producing materials or that they were paid under an available contract or agreement ?

7. The case of the petitioner is that the respondent has claimed contribution for the Travelling/Conveyance allowance and Tiffin/Meals allowance paid to the employees; that Travelling/conveyance allowance and the Tiffin/Meals allowance does not form part of wages and as such, no E.S.I., contribution is to be claimed. But on the other hand, the defence of the respondent is that the Travelling/conveyance allowance and Tiffin/Meals allowance are to be considered as wages under Section 2(22) of E.S.I, Act and as such, E.S.I., contribution is to be claimed.

8. Before entering into further discussion, it is necessary to refer Section 2 (22) of E.S.I., Act 1948.



C.M.A(MD)No.330 of 2020

WEB COPY

“ (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 11[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, 22[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.”

9. It is the case of the respondent that the records produced by the employer was not accepted as the same were not maintained as prescribed under the Payment of Wages Act; that the employer has not produced any basis/yardstick for payment of the said allowances; that no settlement with the Workers' Union for payment of the said allowances was also produced; that the employer has been paying the above payments uniformly to all the workers and that the employer had not



C.M.A(MD)No.330 of 2020

produced the original ledger account of the allowances, audited profit and loss account, balance sheet, income tax statements to cross check the contention of the employer.

10. But, as rightly pointed out by the learned counsel for the employer that the Social Security Officer in his inspection report has specifically admitted that he has verified the records such as General Ledgers, Profit and Loss Account, Balance Sheet and other statutory documents and only on that basis, he has sent his report to the respondent.

11. It is not the case of the respondent that the respondent has rejected the report of the Social Security Officer as the same was not genuine. According to the employer, payment of conveyance allowances and tiffin allowances is only based on the worker's attendance and not for their leave and absence.

12. The learned counsel for the respondent has relied on the judgment of the Hon'ble Supreme Court in *Employees State Insurance*



C.M.A(MD)No.330 of 2020

Corporation Vs. M/s. Texmo Industries reported in **2021 LLR 799**,

wherein, the Hon'ble Apex Court has held that Wages under Section 2(22) of the Employees' State Insurance Act, 1948 includes remunerative payments, but does not include :

(i) compensatory payments; (ii) travelling allowance/concession/free transport from residence to his place of work and would not cease to be 'travelling allowance' only because it was a fixed sum paid along with wages or at regular intervals and the relevant passages are extracted hereunder for better appreciation :

“ 21. The definition of wages in Section 2(22) of the ESI Act clearly excludes Travelling Allowance. The distinction sought to be made by the Petitioner Corporation between Travelling Allowance and Conveyance Allowance, based on the Single Bench judgment of the Karnataka High Court in M/s. IT Solutions (India) Private Limited (supra), is in our view misconceived. There is no cogent reason why Conveyance Allowance which is in effect and substance the same as Travelling Allowance, should be treated differently from Travelling Allowance.

22. The expression "Travelling Allowance" has not been defined in the ESI Act. Under Section 2(24) of the ESI Act all words and expressions used, but not defined in the ESI Act shall have the meaning assigned to them under the Industrial



C.M.A(MD)No.330 of 2020

WEB COPY *Disputes Act, 1947, hereinafter referred to as the 'ID Act'.*

Travelling Allowance is also not defined in the ID Act. There is no provision in the ESI Act or in the ID Act, which restricts the scope and ambit of Travelling Allowance. In the absence of any definition or explanation of the expression "Travelling Allowance" in either of those Acts, the expression has to be construed as per its ordinary meaning in common parlance.

.....

25. Conveyance Allowance, on the other hand, compensates expenses that might be incurred by an employee for reporting to his usual place of work or to any other place of work, where he may have to report. If an employer were to provide the employee with accommodation within walking distance from his place of work and that employee 24-07-2023 (Page 5 of 7) www.manupatra.com Hon'ble Thiru. Justice Mr. K. Murali Shankar were not required to go to any other place in connection with his duties under his contract of employment, the employee may not have to incur any expenditure in connection with his employment. In such a case, Conveyance Allowance would be redundant and might be construed as part of allowance consisting wages. In this case, it is not the case of the Corporation that the employees concerned did not need to avail any conveyance expenditure to report for duty to their place of work, or otherwise in connection with their duties under their contracts of employment. Nor is there any such



C.M.A(MD)No.330 of 2020

WEB COPY

finding. We see no reason why Conveyance Allowance should not be excluded from the definition of wages.

26. As per the Oxford Learner's Dictionary, 8th Edition, conveyance means the process of taking somebody from one place to another. A vehicle or other mode of transport is also formally referred to as conveyance. As per the same dictionary, the word "travel" means "to go from one place to another especially a long distance". That distance could also be a few kilometers. One might travel 10 kms to one's place of work. In many cities people may have to travel for hours to reach their place of work. Travel is an expression with a wide meaning to include long distance. It also covers short distances.

27. Had it been the intention of Section 2(22) to exclude only occasional long distance travel from one city to another, from the definition of wages, the Act would have specifically provided so. The expression 'travel' is also often used interchangeably with the expression 'commute' which means "to travel regularly by bus, train, car etc. between one's place of work and home, as per the said dictionary. An example given in the said dictionary is "she commutes from Oxford to London everyday". Another example given is "people are prepared to commute long distances if they are desperate for work. The employees State Insurance Corporation Court was right in holding that there was no difference between Conveyance



C.M.A(MD)No.330 of 2020

Allowance and Travelling Allowance.

WEB COPY

28. There can be no doubt, as held by this Court in Whirlpool of India Limited v. ESI Corporation reported in MANU/SC/0167/2000 : (2000) 3 SCC 185 that the ESI Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. When there is any ambiguity in any provision, the Court would ordinarily favour a construction that would be beneficial to those for whom the legislation is enacted. In Whirlpool of India Limited (supra), this Court held that production incentive falls within the definition of wages. In this case, there is no ambiguity. There is no such difference between Conveyance Allowance and Travelling Allowance to justify the stand of the Petitioner Corporation that Conveyance Allowance would not fall within the ambit of Travelling Allowance. Travelling Allowance includes Conveyance Allowance. The use of the expression "any travelling allowance" in Section 2(22)(b) makes it clear that all kinds of travelling allowance are excluded from the definition of wages."

13. It is also necessary to refer the decision of Hon'ble Division Bench of this Court in the case of the ***Management of Oriental Hotels***



C.M.A(MD)No.330 of 2020

Ltd., Chennai Vs. Employees State Insurance Corporation, Chennai,

reported in ***(2002) 1 LLJ 14***, wherein, it has been held as follows :

“8. In so far as the conveyance allowance is concerned, even though it forms part of the wages being the amount payable in terms of the contract of employment, having regard to the settlement and even de hors the settlement, the payment of the amount would fall within the ambit of "additional remuneration." Nevertheless, that amount will have to be excluded having regard to the specific exclusion provided in the definition itself for travelling allowance or the value of any travelling concession. The conveyance allowance paid is in the nature of travelling allowance as the object of that payment is to enable the employee to reach his place of work and to defray a part of the cost incurred on the travel from his place of residence to the place of work. If instead of paying the conveyance allowance, the employer had provided free transport to the employees, the monetary value of that benefit of free travel from his residence to the place of work would not have been capable of being regarded as forming part of the wages. The conveyance allowance paid in cash for the purpose of being utilised on the travel from place of residence to the place of work, is of the same character and there is no reason why it should not be regarded as travelling allowance for the purpose of Section 2(22)(b) of the Employees' State Insurance Act.”



C.M.A(MD)No.330 of 2020

14. The Hon'ble Supreme Court in ***Talema Electronic India Private Ltd., Vs. Regional Director, E.S.I., Corporation and another*** reported in **2022 LLR 952**, following its earlier decision in the case of ***Employees State Insurance Corporation Vs. Texmo Industries*** (above referred), has observed that there is no difference between conveyance allowance and travelling allowance and is excluded from the definition of wages.

15. Now turning to the Tiffin/Meals allowance, in ***E.S.I Corporation Vs. Enfield India Ltd.***, reported in **1994 LAB I.C. 2507**, a learned Judge of this Court has held that the amounts paid by way of allowance towards Tea, Milk and Egg to the employees by the employer cannot be considered as wages, coming under the definition of Section 2(22) of the E.S.I., Act. Generally, Tiffin allowance will have to be construed as a sum paid to the employee to defray the free special expenses and as such, the tiffin expenses cannot be considered as part of the wages.

16. It is settled law that the term “special expenses” occurring in



C.M.A(MD)No.330 of 2020

Section 2(22) of the said Act would not include payment given to the employee to defray tiffin and the meals expenses.

17. As rightly observed by the learned E.S.I., Judge, the respondent did not take efforts in contradicting the stand taken by the petitioner by way of getting any such settlement from workers' union. It is pertinent to note that the petitioner employer has taken a specific stand that they were not paying any travelling/conveyance allowance and tiffin or meals allowance to the absentees.

18. Considering the above, the impugned order setting aside the order passed under Section 45 (A) of the E.S.I, Act claiming contribution for conveyance/travelling allowance and tiffin/meals allowance cannot be found fault with and this Court is in entire agreement with the findings recorded by the E.S.I., Court. Hence, this Court concludes that the above appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.



C.M.A(MD)No.330 of 2020

WEB COPY

19. In the result, the Civil Miscellaneous Appeal is dismissed.

Parties are directed to bear their own costs.

26.07.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

das

To

1.The E.S.I Judge, E.S.I Court (Labour Court)
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)No.330 of 2020

K.MURALI SHANKAR,J.

das

Pre-delivery order made in

C.M.A(MD)No.330 of 2020

26.07.2023