



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO No.571 of 1991

Date of Decision: 24th May, 2024

Employees State Insurance Corporation

...Appellant

Versus

M/s Auto Piston Manufacturing Co. Ltd.

...Respondent

CORAM: **HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Argued by:- Mr. Adarsh Malik, Advocate
for the appellant-Corporation.

*As per order dated 29.02.2024, notice issued to the
respondent was received back with the report that
it had been closed long ago.*

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order handed down by learned Judge, Employees' State Insurance Court, Amritsar (for short 'the ESI Court') on 06.03.1991, whereby the Application filed by the respondent-Applicant (here-in-after to be referred as 'the Applicant') under Section 75 of the Employees' State Insurance Act, 1948 (for short 'the Act') for seeking the quashing of the computation order dated 28.05.1987/01.06.1987 and the order dated 22.07.1987 regarding the the recovery of the amount of Rs.49725.35Ps from it (Applicant), as passed by the appellant-Employees State Insurance Corporation (arrayed as respondent in the afore-said Application and here-in-after to be referred as 'the ESIC'), has been allowed, the ESIC has chosen to prefer the instant appeal to lay challenge to the same.



2. Bereft of the unnecessary details, the fact, as emanating from the perusal of the file and culminating in the filing of the present appeal, are that the Applicant filed the above-said Application, while averring therein that its management had adopted the Production Incentive Bonus Scheme, which provided that if the employees gave the production, exceeding the minimum target, then the production incentive bonus would be calculated and paid to them accordingly, on quarterly basis and thus, the amount of such bonus could not be construed to be a part of the wages but the ESIC wrongly issued a show cause notice dated 15.04.1987 to it (Applicant) and later-on, passed the order dated 28.05.1987 under Section 45-A of the Act, to the effect that a sum of Rs.47584.35Ps, along-with interest to the tune of Rs.2141/-, was due from it towards the ESI contributions for the year 1985-86 as the amount of the afore-referred bonus was a part of the wages and it (ESIC) also issued the recovery-certificate dated 22.07.1987 qua this amount. The ESIC submitted its written reply, contesting the claim of the Applicant therein on various grounds. The Applicant filed its replication/rejoinder and the parties had been put to the trial by framing the issues and after appreciating and evaluating the evidence as adduced by them on the record and hearing their respective counsel, the ESI Court has allowed the above-mentioned Application, as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the appellant-ESIC in the instant appeal and have also perused the file carefully.

4. Learned counsel for the ESIC has contended that the ESI Court has gravely erred in observing that since the production incentive bonus was calculated and paid to the employees quarterly, therefore, the same was not a part of their 'wages' whereas in fact, the amount of the afore-referred bonus used to be calculated on monthly basis and was, thus, a part of the wages and in



these circumstances, it becomes explicit that the impugned order is not legally sustainable and hence, it deserves to be set-aside.

5. I find merit in the above-raised contention because Section 2(22) of the Act defines 'wages' as under:-

“(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;”*

From the afore-quoted provisions, it becomes crystal clear that the expression 'wages' would include the additional remuneration, if any, paid at the intervals, not exceeding two (02) months.

6. Though, the Applicant has claimed that it had been paying the production incentive bonus to its employees 'on quarterly basis' but however, it is pertinent to mention here that while appearing as AW1 before the ESI Court, Mr. Satpal Singh, the Personnel Officer in the Applicant establishment, has categorically admitted during his cross-examination that the calculation of the incentive bonus was made on the basis of the salaries disbursed to the workers after every month and that if a worker gave higher production in a particular month, followed with no production or less production in the next



two (02) months, he was also paid the above-said bonus, as calculated on the percentage of the salary and that after every month, the workers came to know as to how much production incentive bonus they would be getting on the basis of their salaries and the production as given by them. The afore-discussed depositions clinch the entire controversy between the parties in the present appeal and these unequivocally speak volumes of the fact that the production incentive bonus was calculated every month, in the eventuality and on basis of the production given by the employees, beyond the minimum target, in that particular month but it used to be paid to them once in the spell of three (03) months and therefore, the above-mentioned bonus has to be considered to be a part of the ‘wages’ as defined under Section 2(22) of the Act and it being so, the ESI contributions were, accordingly, payable by the Applicant in respect of the same.

7. As a sequel to the fore-going discussion, the appeal in hand is, hereby, allowed and the impugned order, passed by the ESI Court, is set-aside and the Application, as moved by the Applicant under Section 75 of the Act, stands dismissed.

24.05.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes