

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 1651 of 2025

M/s. Heinen and Hopman Engineering (I) Pvt. Ltd.

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Barnamoy Basak.

For the State : Mr. Vimal Kr. Shahi, Ld. A.G.P.
Mrs. Kakali Naskar.

For the Respondent No.3 : Mr. Saurabh Sankar Sengupta,
Mr. Richik Rakshit.

Hearing concluded on : 12.03.2025

Judgment on : 11.04.2025

Shampa Dutt (Paul) , J.

1. The present writ application has been preferred against an order dated 18.11.2024 passed by the Referee and Controlling Authority under the West Bengal Shops & Establishment Act, 1963 Barrackpore in S.P.-02/2024.

2. The petitioner's case in short :-

- i) Upon executing a Trust Deed on 01.07.2005, the petitioner Company created a **Non-contributory Pension Scheme** to be

maintained by the Board of Trustees with the Life Insurance Corporation of India, under the name “Heinen & Hopman Engineering (I) Pvt. Ltd. Employees’ Group Pension Scheme.”

- ii) On 11.07.2011 the petitioner Company amended clause 8 of Section III of the Trust Deed dated 01.07.2005, which was approved by the Income Tax Authority on 23.09.2011 and circulated to the employees on 03.05.2012.
- iii) On 11.12.2014, the petitioner Company again amended clause 8 of Section III of the Trust Deed dated 01.07.2005, which was approved by the Income Tax Authority on 11.05.2016.
- iv) To check the misuse of non-contributory Pension Scheme, the petitioner Company made an application before the Income Tax Department, **amending** that superseding all the other clauses and Deed of Variations made in the past, **the benefits of the Superannuation Fund will only be provided to employees attaining the age of retirement that is, sixty years with continuous service in the Company not less than twenty years, except in the case where any sick employee becoming totally invalid to work and move, to be certified by a team of Doctors, before attaining the age of retirement.**
- v) The Deed of Variation was signed and submitted to the Income Tax Department in June, 2020.
- vi) The eligibility of availing Pension only on retirement was indicated to the employees in the letter of increment and the

same was further communicated through email on 23.08.2022.

- vii) The approval of the Deed of Variation from the Income Tax Department was accorded, which was given effect from 04.07.2022.
- viii) The respondent no.3 tendered his resignation through E-mail dated 03.04.2023.
- ix) The respondent no.3 was released from the petitioner Company and was paid full and final settlement through Cheque No.001426 dated 28.04.2023 drawn on DBS Bank India Limited for an amount of Rs.2,22,009/-.
- x) Gratuity was paid through cheque No.199806 dated 15.05.2023 drawn on DBS Bank India limited for an amount of Rs.2,45,000/-.
- xi) **The respondent no.3 has accepted his full and final settlement and gratuity with the remark that Superannuation benefits as per circular dated 03.05.2012 is due from the Company.**
- xii) On 13.02.2024, the respondent no.3 submitted Form-N under Rule 31 of the West Bengal Shops and Establishment Rules, 1964, in the office of the Joint Labour Commissioner, Barrackpore, which was registered as SP-02/24.
- xiii) The petitioner Company submitted its written objection before the respondent no.2, wherein an objection was raised on the point of maintainability as the West Bengal Shops and

Establishment Act, 1963 does not have any provision to deal with the subject of superannuation.

3. On hearing the parties, the respondent no.2 herein passed the order under challenge which is as follows :-

“ORDER

I have gone through the written statement and written objection by the OP as well as counter affidavit on behalf of the complaint and counter affidavit on written objection by the applicant.

Now, the Referee under the Shops & Establishment Act, 1963 is on the decision that the pension as enshrined in the Payment of the Wages Act, 1936 and the Pension of the employees of Heinen & Hopman Engineering (I) Pvt. Ltd. are different in nature.

The pension or the superannuation plan of the above mentioned company is the terms and condition of employment or work done in such employment and it is crystal clear.

So, this pension is very much a wage under the definition of 2(iv) of Payment of Wages Act, 1936 and so under the jurisdiction of Shops & Establishment Act, 1963.

Hence, all the objections including the jurisdiction issue as raised by the OP is overruled.

The OP is directed to take part in these proceedings.

The next date is fixed on 02.12.2024 at 3.30pm for submission of E-I-C along with tendering of documents in duplicate duly affirmed by the Notary on that day by the applicant.

*Serve notice to the both parties via register post
with A/D.*

Sd/-

Referee 18.11.2024

Controlling authority

Under the Shops & Establishment Act, 1963

Barrackpore, North 24 Parganas”

4. The petitioner in this case has **challenged the jurisdiction of the authority**, on the ground that the issue to be decided by the authority concerned, relates to **contribution paid only by the employer to pension** or Provident Fund and interest thereon and as such said amount is not a “wage” and as such the findings of the authority concerned being not in accordance with law is liable to be set aside.
5. The petitioner has relied upon the following judgment:-
 - i) ***Union of India vs. Elphinstone Spinning and Weaving Co. Ltd. & Ors., (2001) 4 SCC 139; Para 17 & 21.***
 - ii) ***Inspector, Railway Protection Force, Kottayam vs. Mathew K Cherian and Another; 2025 SCC OnLine SC 51; Para 21 to 26.***
 - iii) ***Sudhir Chandra Sarkar vs. Tata Iron and Steel Co. Ltd. & Ors.; (1984) 3 SCC 369; Para 16 & 17.***
6. The respondent no.3 herein on filing a written note has relied upon the following judgment :-
 - i) ***Balaram Abaji Patil and Ors. Vs. M. C. Ragojiwalla & Ors., in Special Civil Appln. No. 1322 of 1959, decided on***

22.03.1960, Bombay High Court. Wherein it has been held

as follows:-

“.....It is clear from the definition that all remuneration would be “wages” if the remuneration satisfies two conditions : (1) that it should be payable to “a person employed in respect of his employment or of work done in such employment”, and (2) it should be payable “if the terms of the contract of employment, express or implied were fulfilled.” In the present case, it is not disputed that the remuneration which is claimed as minimum wages was payable to persons employed, in respect of their employment or of work done in their employment. It is however, disputed that the remuneration claimed by way of minimum wages satisfies the other condition, namely, that it should be payable if the terms of the contract of employment, express or implied, were fulfilled. Now it seems clear that the expression “if the terms of the contract of employment, express or implied, were fulfilled” refers only to such of the terms of the contract of employment as are required to be fulfilled by the employed person. The expression has no reference to the terms of the contract which are to be fulfilled by the employer. This is obvious from the fact that, if all the terms of the contract of employment were fulfilled by both the parties to the contract, i.e. by the employer as well as the employee, no question of unpaid wages would arise in those cases where the workers are entitled only to contractual wages. It follows that the definition of “wages” does not confine that expression to contractual wages. The definition does not define “wages” as the remuneration which is payable to the employed person under the terms of the contract of employment, express or implied, but defines it as all remuneration which is payable to the employed person if the latter fulfils the terms of the contract of employment, express or implied. Moreover, the definition uses the words “all remuneration”, with the result that, once the worker has fulfilled his part of the contract, whatever he is entitled to receive from the employer in respect of his employment or of work done in his employment amounts to wages, provided the right of the worker to the remuneration in question flows directly from the fulfillment of his part of the contract. The definition makes no reference to the origin of the employer’s obligation to pay the

remuneration. The obligation may arise from contract, from a binding award, or from a statute. In all such cases, if the amount which the employer is obliged to pay is an amount payable to his employee in respect of his employment or of work done in such employment, and if further amount becomes payable in consequence of the worker having fulfilled the terms of the contract of employment, the amount is "wages" within the definition....."

7. In *Bridge and Roof Co. (India) Ltd. vs Union of India (UOI), (1963)*

3 SCR 978, the Supreme Court laid down the interpretation of allowances that should be taken into consideration for the purpose of deduction of contribution under Section 6 of the EPF Act and defined 'Basic wages'.

8. A report has been filed on behalf of the respondent no.2, The Deputy Labour Commissioner (P), Barrackpore. Exception to the report is also on record.

9. In the report, the Deputy Labour Commissioner (P), the authority concerned, whose order is under challenge has **reiterated** his reasons as stated in his order and has further stated as follows:-

*".....**iii)** Thus, from the language of the provisions of Section 2(vi) of the Payment of Wages Act, 1936 that "**all remuneration (whether by way of salary, allowance or otherwise) if the terms of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment**" and 2(vi)(d) of the payment of Wages Act that "**Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for time within which the payment is to be made;**"*, it is clearly apparent that any component

which is payable as per the expressed terms of employment and the component, which payable to an employee at time of termination is liable to be considered as "wage" as per the definition of the Payment of Wages Act, 1936. Accordingly, as and when the payment of such superannuation is expressly included in the terms of employment and therefore, at the termination, such superannuation is payable to the respondent no. 3 by the petitioner, such payment under the head of superannuation is obviously part and parcel of definition of "wage".

iv) Under the perspective of such interpretation of law, if the fact as asserted in paragraph 2 and 3 hereinabove is analysed, in that case, it would be apparent that the employer M/s Heinen & Hopman Engineering (I) Pvt Ltd, has issued circular to its all employees the criteria for entitlement of Superannuation benefit-----for various tenure of complete continuous service, various percentage on his/her last drawn wages are declared as **Pension**. It is evident from appointment to every increment letter and thus, here arises the question of **"terms of employment, expressed or implied"**. Accordingly, the pension or superannuation benefit of M/s Heinen & Hopman Engineering (I) Pvt Ltd is nothing, but the terms of employment, hence it is in this instant case is a wage.

v) that the clause, 2(3) of the Payment of Wages Act, 1936 has been relied upon by the opponent party (herein the petitioner) to exclude such superannuation payment from wages is grossly non-sustainable as such provision of **Section 2(3) clearly indicates that a contribution is not part of wages, but there is a difference between the term "contribution" and "actual payment"**. Hence, if, it is the question of contribution, it is obviously not a part of the wage, but, when the question of payment of such superannuation arises, it is the part of wage as per the definition of wages as enshrined in the Payment of Wages Act, 1936.

vi) Without any prejudice to the above, the referee (respondent no. 2) states and submits further that inclusive clause and exclusive clause to the main

provisions of Section 2(vi), shall come into play, when the terms of employment is not expressed enough about the payment of wages in terms of employment. But, if it is so expressive, which gives clear indication as to which component shall be part and parcel of wages, that case, the expression of such exclusive clause shall have no role to play in that regard as such.....”

- 10.** On hearing the parties and on perusal of the materials on record and the order under challenge, it appears that the authority herein has categorically held that ‘pension’ in respect of which the application was made before the authority concerned is to be treated as ‘wages’ under the definition of Section 2(iv) of Payment of Wages Act, 1936. On the said findings the authority held that he had the jurisdiction under the Act.

11. Section 2(vi) Payment of Wages Act, 1936 is reproduced herein:-

“2. Definitions .-

*(vi) "wages" means all remuneration (whether by way of **salary, allowances, or otherwise**) expressed in terms of money or capable of being so expressed which would, **if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,** and includes-*

(a)any remuneration payable under any award or settlement between the parties or order of a Court;

(b)any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c)any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d)any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e)any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include-

(1)any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2)the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government]

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4)any travelling allowance or the value of any travelling concession;

(5)any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6)any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)."

12. Admittedly the petitioner company has a trust created for 'non-contributory pension scheme'.
13. The petitioner herein has claimed that **Section 2(vi)(3)** of the payment of wages Act, 1936 is applicable in this case and as such the 'pension' claimed by the worker is not 'wages' and thus the controlling authority herein under the Shops & Establishment Act, 1963, Barrackpore, North 24 Parganas, does not have the jurisdiction in this case. It is stated that the worker/employee has to approach the **Civil Court** for his pensionary relief.
14. Such conduct/view of the company goes **against the thoughts behind the beneficial legislations.**

15. It appears that, **Section 2(vi)(3) of the Act, leaves out** “the **contribution** paid by the employer to any pension fund and the **interest** which may accrue there on, “from the definition of ‘wages’”, and **not the pension** which is due to the employee.
16. The statutory provision herein is plain and unambiguous. The language of the enactment is clear and as such it would not be proper for the Courts to evolve some legislative intent not found in the statute (*Inspector, Railway Protection Force, Kottayam vs. Mathew K Cherian and Another, (Supra)*).
17. The said “contribution” with “interest” which may accrue is, thus not part of “wages” as defined, as in such circumstances a worker/employee has no say regarding such contribution, which is entirely the decision of the company/management/trustees.
18. **In the present case**, the claim before the authority is for ‘**pension**’ which is well within the definition of “wages”, as it is a sum payable to a person employed in respect of his employment for work done in such employment, in the manner as “wage” is paid.
19. The petitioner has further stated that the workman/employee has resigned and as pension is payable on superannuation, the employee/respondent no. 3 herein is thus not entitled.
20. **Admittedly** the petitioner has paid all retiral dues to the employee/respondent no. 3 herein, including gratuity and as such if the employee is eligible for pension, he is entitled to receive the same.
21. **As such, the prayer for ‘pension’ being within the definition of ‘wages’ under Section 2(vi) of the payment of wages Act 1936, is**

not covered under Section 2(vi)(3) of the Act. The claim of the petitioner herein thus having no merit stands rejected.

22. WPA 1651 of 2025 is dismissed.

23. All connected application, if any, stands disposed of.

24. Interim order, if any, stands vacated.

25. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)