

Poompuhar Shipping Corporation ... vs Regional Provident Fund ... on 14 August, 2003

Equivalent citations: (2004) ILLJ 663 Mad
Bench: D Murugesan

Poompuhar Shipping Corporation Ltd., (Through Its M.D.) vs Regional Provident Fund Commissioner And Ors. on 14/8/2003

ORDER

D. Murugesan, J.

1. Petitioner is Poompuhar Shipping Corporation Ltd. (a Government of Tamil Nadu Enterprise). The writ petition has been filed questioning the order of the Assistant Provident Fund Commissioner, Employees' Provident Fund, Madurai, dated January 19, 1996, and the order of the Regional Provident Fund Commissioner, Madurai, dated April 17, 1996. By those orders, the petitioner Corporation was directed to reckon the incentives paid to the employees for provident fund and remit the dues.

2. Following are the few facts that are relevant for the disposal of this writ petition:

The petitioner-Corporation is engaged in transportation of coal by sea and unloading the coal in Tuticorin for the Tamil Nadu Electricity Board to generate power for the supply of electricity. The Corporation comes under the purview of "transport for carriage of goods by water" under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the Act).

3. The applicability of the provisions of the Act to the petitioner-Corporation is not in dispute. The dispute relates to contribution of the provident fund by the petitioner on the incentives paid to its employees. According to the petitioner, the employees are initially appointed as "trainees" on stipendary basis and on completion of such training, they are appointed in appropriate scales of pay. In order to motivate them to discharge more quantum of coal exceeding the ceiling fixed, a scheme of incentive based on the production activity of coal discharged was introduced. As per the incentive scheme, if a workman fulfils their

requirement and carries out the work load fixed for him and exceeds the same, he would be paid in accordance with the scheme. The quantum of amount so paid as incentive varies over from person to person. Such incentive will not fall within the definition of Section 2(b)(ii) of the Act, as the incentive so paid is otherwise a productive bonus, which is specifically excluded from the applicability of the said provision.

4. Based on a complaint of the General Secretary, Poompuhar Shipping Corporation Employees' Union, an enquiry under Section 7-A of the Act was conducted. In spite of the specific stand taken by the petitioner that the incentive paid to the employees will not fall within the definition of Section 2(b)(ii) of the Act, by the impugned orders holding that the incentives are also basic wages as defined under Section 2(b)(ii) of the Act, the petitioner has been directed to pay the dues towards the provident fund on the incentives paid to the employees.

5. Sri S. Jayaraman, learned counsel for the petitioner, placing reliance on various judgments of the Apex Court, would contend that the incentives will not fall within the provisions of the Act making the petitioner liable to contribute its share.

6. I have heard Sri. Vibhishanan, learned counsel for the Provident Fund Commissioner and Sri Hariparanthaman, learned counsel for the union.

7. In view of the rival submissions, the following only question arises for consideration:

"Whether the incentives paid to the employees belonging to the third respondent-union could be construed as basic wages as defined under Section 2(b)(ii) of the Act and consequently, whether the petitioner is liable to contribute its share towards provident fund ?"

8. Before considering the factual aspects in this writ petition, it would be proper to consider the relevant provisions of the Act and judgments relied upon by the respective counsel.

9. Section 2(b)(ii) of the Act reads as under:

"Basic wages means all emoluments which are earned by an employee while on duty or (on leave or on holidays with wages in either case) in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment."

10. While the definition as to the basic wages came up for consideration, a Constitution Bench of the Apex Court in the case of [Bridge and Roof Company \(India\), Ltd. v. Union of India](#), held that inasmuch as the bonus paid to the employee is specifically excluded under Section 2(b)(ii) of the Act, the employer is not liable to contribute provident fund on the amount paid towards production bonus.

11. A Division Bench of this Court in the case of *Regional Commissioner, Employees' Provident Fund v. Management of Southern Alloy Foundries (Private) Ltd.* 1982-II-LLJ-28, while interpreting Section 2(b)(ii) of the Act with reference to the dearness allowance, held that since the dearness allowance is specifically excluded from the definition of basic wages, the employer is not liable to contribute its provident fund towards the dearness allowance paid to its employees.

12. Similarly, in yet another judgment in the case of *R. Ramanathan Chettiar Jewellers, Madurai v. Regional Commissioner, Employees' Provident Fund, Madurai* 1998-II-LLJ-945, this Court, while considering the special allowance paid to the employees, held that the same is not basic wage as defined under Section 2(b) of the Act, as the special allowance is specifically excluded from the provisions of the Act.

13. Sri S. Jayaraman, learned counsel for the petitioner, placing reliance on the above judgments, would submit that the incentives paid to the employees of the third respondent union is nothing but a production bonus and therefore, such payment is also excluded from the provisions of the Act.

14. To find out as to whether the incentives paid to the employees are excluded, it would be appropriate to consider the conditions of appointment. A copy of the appointment order is enclosed at page 1 of the typed set of papers. A perusal of the same would indicate that the employee, in addition to the usual scale of pay and dearness allowance, is also eligible for monthly incentive payments on the basis of Corporation's scheme of incentive payments. The above clause was included even when the employee was put in probation. While the probation was declared successful and an appointment order was made, the same condition is also included in the appointment order. The incentives are paid on the basis of excess clearance of coal within the period of eight hours of work.

15. In all the judgments cited by the learned counsel for the petitioner, the issue put in was the rule of exclusion, namely, when the definition Section specifically excludes bonus, namely production bonus, allowance and special allowance, direction to the employer to contribute provident fund for the amount paid towards either bonus or allowance or special allowance cannot be made. It is also to be seen I that in all these cases, the payments so made either towards bonus or towards allowance or towards special allowance were only on the basis of a contract entered into between the employer and the employee.

16. Coming to the facts of this case, the payment of incentive is not made on the basis of any contract, but is on the basis of the conditions of appointment. That apart, the payment of incentive was made only for the work done by the employees during the course of eight hours and is not over and above the prescribed time of work.

17. The Act is a social welfare legislation. In construing a social welfare legislation, the Court must adopt a beneficial rule of construction, while interpreting any of the Sections of the Act. Even if a Section is capable of two constructions, the construction, which is more beneficial to the employees, shall only be preferred.

18. Going by the scheme of the Act, I find that the contribution of provident fund is a rule and the exclusion from the provisions of the Act is only an exception. Section 2(b)(ii) of the Act defines wages. The legislature intended to exclude certain categories of payments from the applicability of the provisions of the Act,

more particularly, to bring them within the definition of basic wages specifically excluding those categories from the purview of the Act itself like the cash value of any food concession, any dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment and any presents made by the employer.

19. The Courts shall not expand the scope of categories of payments and exclude the applicability of the provisions of the Act by addition to any further category. A literal construction of the definition is clear that as long as "incentive" is not specifically excluded in the definition of basic wages, as a necessary corollary, the presumption would be that "incentive" shall be also construed as basic wages. Such a construction alone is possible only to achieve the object of the Act. As I had already referred that the Act itself is a social welfare legislation, in the interests of the employees, when two views are possible, the view, which is beneficial to the employees alone shall be adopted. In the absence of any specific exclusion, the submission of the learned counsel for the petitioner that the incentives paid to the employees cannot be construed as basic wages is totally unsustainable. When once this Court comes to the conclusion that the incentives paid to the employees will fall within the definition of basic wages as defined under Section 2(b) of the Act, there is no escape for the petitioner to make the contribution in terms of Section 6 of the Act. In that view of the matter, I find no merit in challenge to the impugned orders.

20. Accordingly, the writ petition is dismissed. No costs. Consequently, the above writ miscellaneous petition is also dismissed.