CASE NO.:
Appeal (civil) 695 of 2004

PETITIONER:
EMPLOYEES STATE INSURANCE CORPORATION

RESPONDENT:
GNANAMBIGAI MILLS LTD.

DATE OF JUDGMENT: 19/07/2005

BENCH:
S.N. Variava & Dr. AR. Lakshmanan

JUDGMENT:
JUDGEMENT
O R D E R

This Appeal is against the Judgment of the Madras High Court dated 7th August, 2002. Briefly stated the facts are as follows:-

The Employees of Respondent Company raised a demand for increase of wages. The dispute was referred to the Special Tribunal, Madras for adjudication. By virtue of Section 10-B, Industrial Disputes Act, 1947 which had been introduced in the State of Tamil Nadu, the Government passed orders dated 15th July, 1985 and 29th July, 1985 directing certain payments to be made to the workmen pending the disputes. Both orders contained a clause that any money paid in pursuance of the order could be deducted by the employer from out of the monetary benefits to which the employee would become entitled under the Award which may be passed by the Tribunal.

At this stage, it would be convenient to set out Section 10-B of the Industrial Disputes Act,1947, under which the Orders were passed. Section 10-B reads as follows:-

"10-B Power to issue order regarding terms and conditions of service pending settlement of disputes. -

(1) Where an industrial dispute has been referred by the State Government to a Labour Court or a Tribunal under sub-section (1) of Section 10 and if, in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, it may, by general or special order, make provision, -

(a)for requiring the employer or workman or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman;

(b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be specified in the order; and

(c) for any incidental or supplementary matter which appears to it to be necessary or expedient for the purpose

of the order;

Provided that no order made under this sub-section shall require any employer to observe terms and conditions of employment less favourable to the workman than those which were applicable to them at any time within three months immediately preceding the date of the order.

Explanation. - For the purpose of this sub-section, "public utility service" means -

(i) any section of an industrial establishment on the working of which the safety of the establishment or the workman employed therein depends;

(ii) any industry which supplies power, light or water to the pubic;

(iii) any industry which has been declared by the State Government to be a public utility service for the purpose of this Act.

(2) An order made under sub-section (1) shall cease to operate on the expiry of a period of six months from the date of the order or on the date of the award of the Labour Court or the Tribunal, as the case may be, whichever is earlier.

(3) Any money paid by an employer to any person in pursuance of an order under sub-section (1), may be deducted by that employer from out of any monetary benefit to which such person becomes entitled under the provisions of any award passed by the Labour Court or the Tribunal as the case may be."

The Respondent paid the amounts as directed by the Government. Ultimately, the Respondent Company entered into a Memo of Compromise with the employees and in terms of the Memo of Compromise an Order was taken from the Special Tribunal which reads as follows:-

"To the workmen in the textile mills falling in Group (D) the relief granted shall be in the terms contained in Annexures I and III to the memorandum of compromise, dated 21st March, 1986 (Appendix III), which have been adopted by me as my own findings and adjudication on the relevant issues and the same shall be effective from 1st May, 1986."

Thus, the Special Tribunal never went into the question and did not decide whether or not the amounts paid (under the Government order) were wages or not. It merely gave its imprimatur to a compromise arrived at between the parties. Clause 3(c) of the Memorandum of Compromise, which has been strongly relied upon, reads as follows:-

"It is agreed that the lump sum payment of Rs.500/-Rs.260/- and Rs.75/-, Rs.65/- per month, as the case may be paid or payable to the workmen upto April 30, 1986 as per the Government orders No.1399, dated 15th July, 1985 and No.1546, dated 29th July, 1985 under Section 10-B of the Industrial Disputes Act and consent letter, dated 14th February, 1986 by the Special Industrial Tribunal, be treated as an ex-gratia payment and shall not be adjusted against the future benefits covered under this settlement."

The Employees State Insurance Corporation claimed contributions, on the amounts paid under the afore-mentioned two Government orders. The Employees State Insurance Corporation then sought to recover the contribution. A Writ Petition was thus filed before the High Court. A Single Judge of the High Court held that the amounts paid did not amount to "wages". The LPA filed by the Corporation has been dismissed by the impugned Judgment. The Judgments of the High Court proceed on the footing that the amounts paid under the orders of the Government would be "wages" within the meaning of the definition of the term "wages" as given under Section 2(22) of The Employees' State Insurance Act, 1948. However, they conclude that as the Award of the Tribunal terms these payments as "ex-gratia payments", therefore they cannot now be considered to be 'wages'.

We have heard parties at great length. In our view, the High Court was absolutely right in concluding that the payments made pursuant to the orders of the Government were 'wages' within the meaning of the term as defined under The Employees' State Insurance Act, 1948. We are unable to agree with the submissions made on behalf of the Respondent that even at that stage these were not 'wages'. The term 'wage' as defined in Section 2(22) reads as follows:-

"2(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;"

Thus, any remuneration paid or payable in cash to an employee if the terms of the contract of employment, express or implied, are fulfilled would be a 'wage'. The Government order clearly indicates that the payment was to be adjusted towards the 'wages' after the Award is passed. By virtue of the Government order it is a payment in terms of the contract of employment and therefore it would be a wage.

In our view the High Court has gone completely wrong in concluding that by virtue of the Award it ceases to be wages. As stated above, the Tribunal has not applied its mind as to whether or not the payments were wages. All that the Tribunal did was to give its imprimatur to a compromise between the parties. Merely because the parties in their compromise chose to term the payments as 'ex-gratia payments' does not mean that those payments cease to be wages if they were otherwise wages. As stated above, they were wages at the time that they were paid. They did not cease to be wages after the Award merely because the terms of Compromise termed them as 'ex-gratia payment'. We are therefore unable to accept the reasoning of the Judgments of the High Court. The Judgment of the Division Bench as well as that of the Single Judge accordingly stand set aside. It is held that the amounts paid are wages and contribution will have to be made on those amounts also. We, however, make it clear that payments of the interest will be as per the statutory provisions.

In this view of the matter, the Appeal stands allowed. There will be no order as to costs.