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THE REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION AND ANR.

v.

BATA SHOE COMPANY (P) LTD.

B

OCTOBER 11, 1985

[R.S. PATHAK AND A.P. SEN, JJ.]

Employees State Insurance Act, 1948 - S. 2(22) - 'Bonus' - Whether part of "wages".

C

The respondent-company has two branch factories. Various agreements/settlements were entered into between the managements of these factories and their employees regarding the payment of bonus from time to time. The appellant - Regional Director of Employees' State Insurance Corporation - called upon these factories from time to time to make requisite contribution to the Employees' State Insurance Fund. Initially the managements of these factories acknowledged their liability to deposit the amounts as part of the contract of employment, but subsequently realising that they were not liable in law to make any such contribution under the Employees' State Insurance Act, 1948, declined to make such payment. The managements of these factories applied under cl. (g) of sub-s. (1) of s. 75 of the Act for a decision by the Employees' State Insurance Court on the question of their liability, and contended that the sum payable or paid by way of bonus to the employees was not covered by the definition of the term "wages" in sub-s. (22) of s. 2 of the Act and, therefore, the respondent was not liable to make any contribution. The Employees' State Insurance Court accepted the contention of the respondent.

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Against that order the appellant preferred appeals under s. 82 of the Act, which were dismissed by the High Court holding that the Employees' State Insurance Court was right in taking the view that the bonus in question did not form part of the wages as defined in sub-s. (22) of s. 2 of the Act.

G

Dismissing the appeals of the appellant to this Court,

HELD: 1. The bonus in question, in the instant appeals, does not fall under any category or class mentioned in the definition of "wages" set forth in sub-s.(22) of s. 2 of the Employees' State Insurance Act, 1948. [645 E]

H

A In the instant case, the bonus paid by the respondent to its employees is in the nature of ex-gratia payment or, as has been described in one of the settlements, paid as a gesture of goodwill on the part of the respondent. The bonus in question was neither in the nature of production bonus nor incentive bonus nor customary bonus nor any statutory bonus. It cannot be regarded as part of the contract of employment. Although the provisions B relating to it were included in the Standing Orders and Rules, they were subsequently excluded from them. Therefore, the bonus paid or payable by the respondent to its employees under the successive settlements and agreements made between them cannot be regarded as remuneration paid or payable to the employees in fulfilment of the terms of the contract of employment. [644 C-F]

C 2. The concept of bonus has been analysed and described by this Court as representing the cash incentive paid in addition to wages and given conditionally on certain standards of attendance and efficiency being attained. When wages fall short of the living standard or the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production, the demand for bonus becomes an industrial claim. It D has not been shown that this Court has subsequently widened the concept of bonus to include a payment made by the employer ex-gratia or as an expression of goodwill towards its employees. [644 F - H; 645 A - C]

3. The first category of remuneration falling within the E definition of "wages" in sub-s.(22) of s. 2 of the Act is not satisfied by the bonus in question in the instant appeals. The second category of remuneration defined within the expression "wages" by sub-s.(22) of s. 2 of the Act speaks of other additional remuneration paid at intervals not exceeding two months. The bonus under consideration here is not paid at F intervals not exceeding two months. It is payable within "one month after the end of each quarter". [645 C-E]

Muir Mills Co. Ltd. v. Suti Mills, [1955] 1 S.C.R. 991; **Shree Meenakshi Mills Ltd. v. Their Workmen**, [1958] S.C.R. 878; and **Standard Vacuum Refining Co. of India v. Its Workmen and Anr.**, [1961] 3 S.C.R. 536 relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 741-42 of 1978.

H From the Judgment and Order dated 2.5.1975 of the Patna High Court in Appeals from Original Orders Nos. 92 and 93 of 1971.

Abdul Khader, R.N. Kapoor and Miss A. Subhashini for the Appellants. A

G.B. Pai, Parveen Kumar, Anil Kumar Sharma and P.R. Das for the Respondent.

The Judgment of the Court was delivered by B

PATHAK, J. These appeals by special leave are directed against the common judgment and order of the Patna High Court dismissing two appeals filed by the Regional Director, Employees' State Insurance Corporation on the question whether the respondent is liable to pay the disputed bonus to its workmen. C

The respondent, Bata Shoe Company (P) Ltd., has a branch factory at Digha Ghat and another at Mokamah in the State of Bihar. At the Digha Ghat branch, the respondent entered into a settlement with its workmen on May 6, 1947, in which it was agreed that production bonus payable to the workmen would remain unaltered but employees earning less than Rs. 200 would get an extra bonus called "good attendance bonus" at 5% of their yearly salary provided they completed active service for 265 days annually inclusive of Saturdays. It was stipulated that attendance bonus would be calculated in the same way as production bonus. On November 28, 1951 there was an agreement by which it was agreed that "the system of attendance bonus for the year 1952 will be discontinued and the ex-gratia bonus's percentage will be increased by 5%, i.e. instead of 10% it will be 15% to all employees." It was also agreed that corresponding changes would be made in the Standing Orders and Rules in order to incorporate these changes. Later, another settlement was recorded, this time before the Chairman, Industrial Tribunal, Bihar, in a pending Reference of 1955 where it was mentioned that the respondent had agreed to increase the general bonus, effective from the first quarter of 1957, from 15% to 16%. Thereafter on July 27, 1961 there was another settlement which provided :- D E F

> "In view of the overall satisfactory settlement on all the outstanding points of the Union and of those points raised by the management, as a gesture of goodwill the management declared that with effect from 3rd quarter of 1961 the General Bonus will be increased from 16-1/2% to 17-1/2%. The workmen's representatives appreciated this gesture of the management and expressed satisfaction on behalf of the workmen on the increase of General Bonus." G H

This was followed by a further settlement dated January 9, 1963 arrived at in the course of conciliation proceedings before the Conciliation Officer-cum-Deputy Labour Commissioner, Bihar. It provided that :

> "BONUS:
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> The rate of payment of bonus, effective from 4th quarter of 1962 will stand revised at 19% in place of 17-1/2% as at present. The payment of bonus will be made one month after the end of each quarter at the rate of 19% of the total salary and/or wages paid to each workman and employee during the quarter immediately preceding (such salary or wages are exclusive of any other special allowance or rewards granted to him during such period). Such bonus will be payable only to those who have completed six months' approved service ending on the last day of the quarter; and to those who have completed less than six months' approved service on the last day of the quarter, the bonus will be payable at the rate of 19-1/2% of their total salary or wages as aforesaid. The bonus will be available only to those who are in the employ of the company on the last day of the quarter and who have given regular and approved service during the quarter to which the payment of bonus is available."

The last document recording a settlement is dated July 17, 1963, and pursuant to it the bonus clause was deleted from the Standing Orders and Rules.

The facts relating to the respondent's Mokamah factory are substantially similar, except that the bonus scheme was not incorporated at any time in the Standing Orders and Rules.

The respondent company at its two factories, Digha and Mokamah, was called upon from time to time by the Regional Director, Employees' State Insurance Corporation to make the requisite contribution to the Employees' State Insurance Fund. At first, the managements of the two factories acknowledged their liability to deposit the amounts as part of the contract of employment, but subsequently realising, as they allege, that they were not liable in law to make any such contribution under the Employees' State Insurance Act 1948, they declined to make such

payment. Apprehending coercive methods of recovery on the part of the appellant, the managements of the two factories applied under the cl.(g) of sub-s.(1) of s. 75 of the Act for a decision by the Employees' Insurance Court on the question of their liability. The contention of the respondent was that the sum payable or paid by way of bonus to the employees was not covered by the definition of the term "wages" in sub-s. (22) of s. 2 of the Act and, therefore, the respondent was not liable to make any contribution. The Employees' State Insurance Court accepted the contention of the respondent. Against that order the Regional Director, Employees' State Insurance Corporation, Patna preferred appeals under s. 82 of the Employees' State Insurance Act 1948, and the appeals have been dismissed by the Patna High Court by its judgment and order dated May 2, 1975. The High Court has held that the Employees' State Insurance Court was right in taking the view that the bonus in question did not form part of the "wages" as defined in sub-s. (22) of s. 2 of the Employees' State Insurance Act, 1948.

The contribution payable by an employer under the Employees' State Insurance Act, 1948 is computed with reference to the wages of the employee, and in these appeals the only question is whether the bonus paid by the respondent to its employees at the Digha Ghat and the Mokamah branch factories under the settlements mentioned earlier can be regarded as "wages" as defined by sub-s. (22) of s. 2 of the Act. Sub-s. (22) of s. 2 defines "wages" as follows:-

> "(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 -
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> (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
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> (b) any travelling allowance or the value of any travelling concession;
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> (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."

The entire argument of the appellants before the High Court was that the bonus paid or payable to the employees by the respondent was in the nature of remuneration paid in cash to the employees under the express terms of the contract of employment. In other words, the appellants relied on that part of the definition of "wages" which speaks of "all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled". Before us, the appellants rely on the same provision in the definition. They also rely on that part of the definition which speaks of "wages" as "other additional remuneration, if any, paid at intervals not exceeding two months.....". The remaining provisions of the definition were not relied on. We are, therefore, called upon to consider whether the bonus in question satisfies the terms of either of the two kinds of remuneration mentioned above.

It is plain from what has gone before that the bonus paid by the respondent to its employees is in the nature of ex-gratia payment or, as has been described in one of the settlements, it is paid as a gesture of goodwill on the part of the respondent. It is nothing else. Indeed, learned counsel for the parties were agreed before the High Court that the bonus in question was neither in the nature of production bonus nor incentive bonus nor customary bonus nor any statutory bonus. It cannot be regarded as part of the contract of employment. Although the provisions relating to it were included in the Standing Orders and Rules, they were subsequently excluded from them. In our opinion, therefore, the bonus paid or payable by the respondent to its employees under the successive settlements and agreements made between them cannot be regarded as remuneration paid or payable to the employees in fulfilment of the terms of the contract of employment.

The concept of bonus has received the attention of this Court in a series of cases, and we need mention only some of them. One of the first authoritative decisions rendered by this Court is **Muir Mills Co. Ltd. v. Suti Mills**, [1955] 1 S.C.R. 991, where N.H. Bhagwati, J., speaking for the Court, analysed the concept of bonus and described it as representing the cash incentive paid in addition to wages and given conditionally on certain standards of attendance and efficiency being attained. When wages fall short of the living standard or the industry makes huge profits part of which are due to the contribution

which the workmen make in increasing production, the demand for bonus, it was said, becomes an industrial claim. The view was followed by this Court in the **Sree Meenakshi Mills, Ltd. v. Their Workmen**, [1958] S.C.R. 878, but the two conditions, that the wages paid to workmen fall short of living wages and that the industry should be shown to have made profits which are partly the result of the contribution made by the workmen in increasing production were regarded as being of cumulative significance. Then followed **Standard Vacuum Refining Co. of India v. Its Workmen and Anr.**, [1961] 3 S.C.R. 536, which dealt with the concept of bonus elaborately while re-affirming what had been said in the earlier two cases. It has not been shown to us that this Court has subsequently widened the concept of bonus to include a payment made by the employer ex-gratia or as an expression of goodwill towards its employees. It seems to us clear that the first category of remuneration falling within the definition of "wages" in sub-s.(22) of s. 2 of the Employees' State Insurance Act, 1948 is not satisfied by the bonus in question in these appeals.

The second category of remuneration defined within the expression "wages" by sub-s. (22) of s. 2 of the Act speaks of other additional remuneration paid at intervals not exceeding two months. It cannot be disputed that the bonus under consideration here is not paid at intervals not exceeding two months. It is payable "one month after the end of each quarter".

We have carefully perused the terms of the definition of "wages" set forth in sub-s. (22) of s. 2 of the Employees' State Insurance Act, 1948, and we are satisfied that the bonus in question in these appeals does not fall under any category or class mentioned in the definition.

In the result, we find ourselves in agreement with the High Court, and therefore we dismiss the appeals with costs.

A.P.J. Appeals dismissed.