A THE REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION

v.

M/S POPULAR AUTOMOBILES ETC.

SEPTEMBER 29, 1997

B

[S.B. MAJMUDAR AND S. SAGHIR AHMAD, JJ.]

Labour Law :

C *Employees' State Insurance Act, 1948 : Sections 39, 40—Remittence of contribution under—Liability of suspended employee and employer—Suspended employee covered by beneficial provision of the Act—Plea, that suspended employee and employer not liable because the subsistence allowance is not covered under the definition of 'wages' as the suspended* D *employee does not fulfil the terms of contract of employment—Held, suspended employee and the employer are liable to contribute their respective shares on the amount of subsistence allowance paid to the suspended employee—Susbsistence allowance forms part of the definition of 'wages'—Suspended employee cannot be said to have not fulfilled his part of terms of contract of employment as he is willing to offer his services—Kerala payment of* E *subsistence allowance Act. 1972.*

Section 2 (22)—'Wages'—Definition of—Subsistence allowance—Whether covered under the definition—Held, yes.

The question for determination in this case is whether suspended F **employees and its employer are liable to remit under Employee State Insurance Act, (hereinafter called the Act) the contributions in connection with subsistence allowance amounts received by suspended employee during domestic enquiry.**

The High Court held that there was no liability on the part of the G **suspended employee or his employer to remit contributions in connection with subsistence allowance amounts under the Act, because the subsistence allowance paid to an employee during suspension, pending domestic enquiry could not be covered by the definition of the term 'wages' as found in sub-section (22) of Section 2 of the Act, as a suspended employee does not fulfil** H **the terms of contract of employment as he is not actually rendering any service**

during the period of suspension. A

In appeal to this court the appellant contended that the Act being a beneficial piece of legislation, offers statutory insurance against employment injuries suffered by insured workman while in service. For earning the statutory coverage, employee as well as the employer are liable to contribute and remit under the Act, in order to enable the corporation/appellant to B discharge its statutory obligations and that during suspension period employer-employee relationship does not get snapped; and that during suspension the employee cannot be said to have refused to fulfil his part of contract as he is willing to work but it is the employer who does not want him to work and pays him reduced amount of wages; and that the subsistence C allowance which is reduced scale of wage payable to the suspended employee can also form part and parcel of the term 'wages'.

The respondent contended that on the analogy of the payment made during the period of lay off and lockout, subsistence allowance would also not be covered by the first part of the definition of wages and as the inclusive part D does not mention subsistence allowance, it should be treated to be outside the sweep of section 2 sub section (22).

Allowing the appeals, this Court

HELD : 1.1. Subsistence allowance forms part of wages as per sub- E section (22) of Section 2 of Employee State Insurance Act and consequently on the said amount the employee will be liable to contribute under section 39 by way of employees contributions and equally the employer would be liable to contribute his share by way of employer's contribution on the amount of subsistence allowance paid to the suspended employee. [361-A-B]

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1.2. It is not possible to appreciate as to how it can be said that on the amount of subsistence allowance received by him permanently, he is not bound to contribute any amount to the Corporation and equally the employer of such a suspended employee is also not bound to make his parallel contribution as per the rates provided under the Act especially when all the benefits of G statutory insurance coverage are made available by the Corporation to such a suspended employee. All the employees are entitled to get the statutory coverage of the benefits being insured employees and any person employed for wages is to be treated as an employee for the purpose of the Act. Under these circumstances an employee who is admittedly covered by the Act and who is entitled to get benefits under the Act as insured employee will not H

A cease to be an employee covered by the Act if he is placed under interim suspension pending domestic enquiry on any alleged misconduct by his employer. During suspension period pending enquiry the employer employee relationship does not come to an end. It could come to an end only when after enquiry his services on proof of misconduct are ordered to be terminated. Till then he continues to be an employee for all purposes subject to only two B consequences flowing from such interim suspension namely, in the first place the employee will remain prohibited from actually offering his services and discharging his duties as the employer does not want him to do so and secondly during the period of suspension pending enquiry the remuneration payable to the employee will get curtailed and will be treated as subsistence C allowance as legally permissible under the rules and which may range from 50% at the lowest to even 100% of the wages at the highest if the suspension continues beyond the requisite period as contemplated by service rules and regulations concerned. Even during suspension when the employee is being paid subsistence allowance and not full wages, he remains entitled to get all the benefits as available to working employees on the same basis as laid down D by various provisions of Chapter-V of Employees State Insurance Act. It is not as if a suspended employee gets lesser benefit as compared to a working employee under the provisions of the said Chapter. They stand at par. Subsistence allowance is not to be refunded by the suspended employee whatever may ultimately be the result of the domestic enquiry.

E [354-F-H; 355-A-C]

1.3. It cannot be said that subsistence allowance is not the remuneration paid to him though at a reduced rate. The term wages as defined by Section 2 (22) means all remuneration paid or payable in cash to the employee, if the terms of the contract of employment, express or implied, were fulfilled. Thus F it is a more comprehensive definition, which taken in its sweep, in the first part, all remuneration paid or payable to employee. Therefore, the amount to an employee or actually paid to an employee, if terms of contract of employment were fulfiled would constitute wages. A regular employee who is willing to work and whose services are taken by the employer gets the remuneration G for the work actually done by him under the contract of employment. But in case of a suspended employee he gets lesser amount by way of subsistence allowance but that is also as a remuneration for being continued on the roll of employment as an employee and so far as he is concerned, he cannot be said to have not fulfilled his part of the terms of contract of employment as he is willing to offer his services but it is the employer who prohibits him from H actually giving his services under the contract of employment. The situation

almost resembles, to grant of half pay as the case may be. Therefore, it cannot be said that the suspended employee does not fulfil his part of the contract of employment or commits breach of any of the terms of the contract of employment. [355-G-H; 356-A-B] A

1.4. If the first part of the definition of 'wages' will include all remuneration paid or payable in cash, to an employee, if the terms of contract of employment express or implied, were fulfilled and consequently even if an employee is suspended as per the service regulations by the employer pending enquiry, it cannot be said that the employee has committed breach of any of the terms of the contract of employment. Nor can it be said that the employer has committed breach of any of the terms of the contract of employment as the service rules applicable to the employee would be part and parcel of his conditions of employment and acting on the said service rules of the employer prohibits the employees from reporting for duty and doing actual work, the employer cannot be said to have committed breach of any of the terms of the contract of employment when legally permissible suspension pending enquiry is imposed by the employer on the employee. Such is not a case when a lockout and layoff is imposed by the employer as in the case of lock out the employer commits breach of the contract of employment by refusing to give work to the employee for no fault of his. Similarly in case of layoff, the employees are refused work by the employer for no fault of the employees. In either case the employer would be committing breach of the terms of the contract of employment by his own act which may be justified or otherwise. Under these circumstances, but for the inclusive part of the definition encompassing payment made to an employee in respect of any period of lock out or lay off, the said payment would not have been covered by the definition of 'wages' under section 2 sub-section (22) of the Act. The first part of the said definition obviously would not apply to such a case, as terms of the contract of employment cannot be said to be complied with at least by the employer in such an eventuality. Such is not the case when employer acting as per terms of employment governing the employees, suspends him pending enquiry. [358-B-G] B C D E F

Balasubrahamanya Rajaram v. *B.C. Patel & Ors.*, AIR (1958) SC 518 and *Nutan Mills* v. *Employees State Insurance Corporation,* AIR (1956) Bombay 336, distinguished. G

Madella Woollens Ltd. v. *Employees' State Insurance Corporation and Ors.*, [1994] Suppl. 3 SCC 580; *Harihar Polyfibres* v. *Regional Director ESI Corporation,* [1985] 1 SCR 712; *Indian Drugs and Pharmaceuticals Ltd. etc.* H

A **v. *Employees State Insurance Corporation etc.*, [1996] 8 SCALE 688; *Assistant Regional Director, Nagpur* v. *Model Mills, Nagpur Ltd.*, [1993] Suppl. 1 SCC 615 and *Mulchandji Joshi* v. *First Civil Judge, Class I Nagpur and Anr.*, AIR (1956) Bombay 262, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3850 of 1993
B Etc.

From the Judgment and Order dated 21.1.93 of the Kerala High Court in M.F.A. No. 392 of 1992.

WITH

C C.A. No. 6724/97, 6723/97, 6725/97 and C.A. No. 6726/97.

V.J. Francis, Rajiv Nanda, Ms. Anubha Jain and A.K. Sharma for the Appellant.

T.L. Vishwanatha Iyer, S. Balakrishnan, S. Prasad, Ms. Ramni Taneja and
D G. Prakash for the Respondents.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. Leave granted in all the cognate Special Leave Petitions.

By consent of learned advocates of parties all these appeals were heard
E finally and are being disposed of by this common judgment. The Employees' State Insurance Corporation (in short 'the Corporation') functioning in the State of Kerala as well as in the State of Karnataka in the appeals concerned, have posed for our consideration the following question of law :

> "Whether a suspended employee and his employer are liable to remit
F under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act') the requisite contributions under the said Act in connection with the subsistence allowance amounts received by the suspended employee during the period of his suspension pending domestic enquiry."

G In the impugned judgments under appeal the High Courts of Kerala and Karnataka have taken the view that there is no such liability on the part of the suspended employee or his employer. The learned counsel for the appellant-Corporation submitted to the contrary for our consideration.

A few relevant facts leading to these appeals may be noted at the
H outset. It is not in dispute between the contesting parties that the respondents

in these appeals are the employers and the suspended persons are their employees. Both of them are governed by the Act. It is also not in dispute between the parties that prior to the suspension of these employees the respondent-employers were remitting the requisite contribution under Sections 39 and 40 of the Act both by way of employees' contributions and the employers' contributions to the Corporation which had insured all these employees concerned as per Section 38 of the Act in the manner provided thereunder. It is also not in dispute that even during the period of suspension the suspended employees covered by the beneficial provision of the Act and were entitled to all the benefits available to employees under Chapter V of the Act and the coverage of entire beneficial scheme provided by the Act in that Chapter from Section 46 to Section 73 was available even in cases of suspended employees who were getting only subsistence allowance as per the rules and regulations governing their conditions of service. The High Courts in the impugned judgments have taken the view that subsistence allowance paid to an employee during suspension pending domestic enquiry would not be covered by the definition of the term 'Wages' as found in sub-section (22) of Section 2 of the Act. The said definition reads 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;
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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 entitled on him by the nature of his employment; or
>
> (d) any gratuity payable on discharge;"

It was held that before any payment made by the employer to the employee is covered by the said definition of 'wages' it should be a remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled. That in case of a suspended employee the terms of contract of employment would not be fulfilled as he is not actually rendering any service during the period of

A suspension.

Learned counsel appearing for the appellant-Corporation contended that the aforesaid view of the High Courts is clearly erroneous in law. He submitted that the Act is a beneficial piece of legislation offering statutory insurance against employment injuries suffered by insured workmen while in B service and for earning the statutory coverage of insurance the insured workmen had to contribute as laid down by Act and simultaneously their employers had also to add their contribution to the said amount and remit the same to the Corporation to enable the Corporation to discharge its statutory a obligations under the Act for the benefit of the insured employees. It was C submitted that during the period of suspension the employer-employee relationship does not get snapped. The employee cannot be said to have refused to fulfil his part of the contract as he is willing to work but it is the employer who does not want him to work and instead pays him reduced amount of wages as permissible under the rules by way of subsistence allowance which in a given case beyond the requisite period may not only D go up from 50% if wages to 75% but may also go up in given contingencies to a ceiling of 100% of wages. Consequently subsistence allowance squarely falls within the first part of the definition of the term 'wages' as found in sub-section (22) of Section 2 of Act. In support of his contention three decisions of this court were pressed in service - *Modella Woollens Ltd.* v. *Employees' State Insurance Corporation and another,* [1994] Supp. 3 SCC 580; *Hariher* E *Polyfibres* v. *The Regional Director ESI Corporation,* [1985] 1 SCR 712 and *Indian Drugs & Pharmaceuticals Ltd Etc.* v. *Employees State Insurance Corporation Etc.,* (1996) 8 SCALE 688. The first judgment refers to production bonus. The second one refers, amongst others, to incentive bonus while the third one refers to overtime wages. All these additional monetary benefits F were held to be covered by the inclusive definition of term 'wages' as found in sub-section (22) of section 2 of the Act. It was, therefore contended that there is no reason why subsistence allowance which is a reduced scale of wages payable to the suspended employee cannot also form part and parcel of the term 'wages' as defined in the Act.

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Learned counsel for the respondent-employers on the other hand submitted, placing reliance on a decision of a Bench of two learned Judges of this Court in the case of *Assistant Regional Director Nagpur* v. *Model Mills Nagpur Ltd.,* [1993] Supp. 1 SCC 615, that prior to the amendment of the definition of the term 'wages' in the Act even payment for any leave H period was not treated as wages. He also placed reliance on two decisions

of the Bombay High Court in the case of *Ganpatlal Malchandji Joshi* v. *First Civil Judge Class I Nagpur and another,* AIR (1958) Bombay 262 and *Nutan Mills* v. *Employees State Insurance Corporation,* AIR (1956) Bombay 336 for submitting that even maternity leave benefit was not considered to be wages in the first judgment and in the second judgment it was held of course in the light of unamended definition of the term 'wages' as found in sub-section (22) of section 2 of the Act that lay-off compensation would not be included in the term 'wages' for the purpose of computing contributions from the employees and employers qua the said amount.

Before referring to the aforesaid decisions it will be necessary to have a quick glance at the scheme of the Act. The Act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. Thus this is a beneficial piece of legislation which grants a statutory insurance coverage to employees in the establishments covered by the Act so that the Corporation would be statutorily enjoined to make available these benefits to the suffering employees and they may not have to be at mercy of the employer concerned who may or may not readily make available these benefits to the suffering employees if statutory coverage of the Act is not available to them. As laid down by Section 1 sub-section (4) of the Act it shall apply in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories. As per sub-section (5) of section 1 of the Act, the appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government with the approval of the Central Government, after giving six months notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Section 2 is the Definition Section Sub-section (4) thereof defines 'contribution' to mean, 'the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act'. Sub-section (6) of Section 2 defines 'Corporation to mean, ''Employees' State Insurance Corporation set up under this Act'' The appellant-corporation is the said Corporation. Sub-section (8) of section 2 defines 'employment injury' to mean, 'a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India'. Sub-section (9) of Section 2 defines

A 'employee' to mean, 'any person employed for wages in or in or connection with the work of a factory or establishment to which this Act applies'. We are not concerned in the present cases with such employees whose wages exceed the prescribed limit of wages permanently. Hence we need not refer to that part of the definition of 'employee'. Sub-section (10) of Section 2 defines 'exempted employee' to mean, 'an employee who is not liable under B this Act to pay the employee's contribution'. Such exempted employees are contemplated by Section 42 which lays down that, 'no employee's contribution shall be payable by or on behalf of an employee whose average daily wages during a wage period are below such wages as may be prescribed by the Central Government'. Chapter IV deals with 'Contributions'. Section 38 lays C down that', subject to the provisions of this Act all employees in factories, or establishments to which this Act applies shall be insured in the manner provided by this Act. Section 39 deals with contributions payable under the Act. Such contributions as per sub-section (1) thereof will comprise of contribution payable by the employer (referred to as the employer's contribution) and the contribution paid by the employee (referred to as the D employee's contribution) and shall be paid to the Corporation. These contributions are to be paid at such rates as may be prescribed by the Central Government. Section 40 enjoins the principal employer to pay contribution in the first instance. Section 41 deals with 'Recovery of contribution from immediate employer'. As indicated earlier, the benefits flowing from the scheme E of the Act which are available to the insured employees comprise of diverse benefits enumerated in chapter V as provided in Sections 46 to 73.

On the aforesaid scheme of this Act, therefore it becomes very clear that all employees are entitled to get the statutory coverage of the benefits being insured employees and any person employed for wages is to be treated F as an employee for the purpose of the Act. Under these circumstances an employee who is admittedly covered by the Act and who is entitled to get the benefits under the Act as insured employee will not cease to be an employee covered by the Act if he is placed under interim suspension pending domestic enquiry on any alleged misconduct by his employer. It is axiomatic G to say that during suspension period pending enquiry the employer-employee relationship does not come to an end. It would come to an end only when after enquiry his services on proof of misconduct are ordered to be terminated. Till then he continues to be an employee for all purposes subject to only two consequences flowing from such interim suspension, namely, in the first place the employee will remain prohibited form actually offering his services and H discharging his duties as the employer does not want him to do so and

secondly during the period of suspension pending enquiry the remuneration payable to the employee will get curtailed and will be treated as subsistence allowance as legally permissible under the rules and which may range from 50% at the lowest to even 100% of the wages at the highest if the suspension continues beyond the requisite period as contemplated by the service rules and regulations concerned. It is also to be kept in view and there is no dispute on this aspect that even during suspension when the employee is being paid subsistence allowance and not full wages he remains entitled to get all the benefits as available to working employees on the same basis as laid down by various provisions of chapter V. It is not as if a suspended employee gets lesser benefits as compared to a working employee under the provisions of the said Chapter. They stand at par. It is also to be appreciated that subsistence allowance is not to be refunded by the suspended employee whatever may ultimately be the result of the domestic enquiry. Hence only because the total remuneration paid to the suspended employee gets reduced to 50% or to any higher percentage going up to 100% it is not possible to appreciate as to how it can be said that on the amount of subsistence allowance received by him permanently he is not bound to contribute any amount to the Corporation and equally the employer of such a suspended employee is also not bound to make his parallel contribution as per the rates provided under the Act especially when all the benefits of statutory insurance coverage are made available by the Corporation to such a suspended employee. However, great reliance was placed by learned counsel for the respondents on a decision of this Court in the case of *Bala Subrahmanya Rajaram* v. *B.C. Patel and others,* AIR (1958) SC 518 wherein it has been observed that the word 'remuneration' means the amount payable for service rendered. The aforesaid observation was made in the context of the payment of Wages Act with which this Court was concerned in the said decision. We fail to appreciate how the said decision can be of any real assistance to the respondents in the present cases as the term 'wages' as defined by Section 2 sub-section (22) of the Act means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled. Thus it is a more comprehensive definition which takes in its sweep in the first part all remuneration paid or payable to the employee. Therefore, the amount payable to an employee or actually paid to an employee if the terms of the contract of employment were fulfilled would constitute wages. A regular employee who is willing to work and whose services are taken by the employer gets the remuneration for the work actually done by him under the contract of employment. But in case of a suspended employee he gets lesser amount by way of subsistence allowance but that is also as a remuneration for being

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A continued on the roll of employment as an employee and so far as he is concerned he cannot be said to have not fulfilled his part of the terms of contract of employment as he is willing to offer his services but it is the employer who prohibits him from actually giving his services under the contract of employment. The situation almost resembles to grant of half pay B leave or leave on even more than half pay as the case may be. Therefore, it cannot be said that the suspended employee does not fulfil his part of the contract of employment or commits breach of any of the terms of the contract of employment. The prohibition, if any, is imposed by the employer against him and that prohibition in the absence of any rules and regulations governing the payment for remuneration during suspension to the concerned employee C would have entitled the suspended employee to get the full remuneration because he was ready and willing to perform his part of the contract of employment but it was the employer who prohibited him from performing his duties. But if there is a valid service regulation which reduces the scale of remuneration, during suspension, the employee gets that reduced permissible D scale of remuneration by way of subsistence allowance. All the same it cannot be said that it is not the remuneration paid to him though at a reduced rate.

It is also to be appreciated that a suspended employee who gets all the benefits under the Act, may in giving contingencies remain suspended for a E number of years pending the enquiry and in the meantime may be entitled to draw 100% of wages as subsistence allowance under the relevant service rules and regulations. Under these circumstances even though he may get full wages by way of subsistence allowance and even though he may be entitled to all the benefits under the Act he may not be required to contribute F anything if the contention of the learned counsel for the respondents is accepted and ultimately if he is removed from service after the decision in the departmental enquiry he would walk away with all benefits under the Act without any corresponding obligation to contribute towards the said benefits. On the other hand, if he is fully exonerated and reinstated in service and in the meantime if he had contributed proportionately to the extent of subsistence G allowance earned by him the balance of remuneration which may be paid to him for the back period may make him liable to contribute only remaining proportionate amount of contribution to the extent of additional remuneration paid to him to make up for the difference between the full wages for the period of erstwhile suspension in question and the actual subsistence allowance H given to him and for which he had already contributed earlier. In either case

employer will also remain liable to give his proportionate contribution along with employee's contribution both on subsistence allowance amount as well as on balance of wages paid up to the employee later on. If the suspended employee is ultimately removed from service, there would arise no occasion for such employee to make additional contribution on any extra amount other than subsistence allowance received by him and equally employer would not be called upon to make proportionate contribution on any extra amount save and except on such subsistence allowance received by the employee concerned. The interpretation canvassed by learned counsel for the respondents would create an anomalous situation as aforesaid while the submission canvassed by learned counsel for the appellant-Corporation would avoid the same and would fructify and enhance the benevolent purpose underlying the enactment of this welfare legislation.

In this connection one submission of learned counsel for the respondents requires to be noted. He submitted, placing reliance on the inclusive part of the definition of the terms 'wages' in Section 2 sub-section (22) of the Act, that in a case where the employee is ready to work but the employer does not allow him to work by imposing lock-out or lay-off, payment made to such employee gets covered only by the inclusive part of the definition which means that otherwise it would not have been covered by the first part of the definition. That similar is the situation where the workman is suspended pending enquiry and payment is made to him by way of subsistence allowance. In such a case also employee is ready to work but the employer does not allow him to work. On the analogy of the payment made during the period of lock-out or lay-out, such subsistence allowance would also not be covered by the first part of the definition and as the inclusive part of the definition does not mention subsistence allowance, it should be treated to be outside the sweep of Section 2 sub-section (22) of the Act. In our view, this submission does not stand scrutiny. It has to be kept in view, as noted earlier, that subsistence allowance paid to a suspended employee is not recoverable or refundable even though ultimately the suspended employee is removed from service on the proof of misconduct for which he was proceeded against in departmental enquiry. The Kerala Payment of Subsistence Allowance Act, 1972 also clearly provides in Section 3 sub-section (2) that an employee shall not in any event be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1). But even apart from the said statutory provision on the general principles applicable to subsistence

A allowance paid to an employee pending departmental enquiry no such allowance is refundable by him in case the employee gets ultimately removed from service on proof of misconduct. So far as the submission of learned counsel for the respondents on the inclusive part of the definition is concerned it has to be kept in view that if the first part of the definition of 'wages' will B include all remuneration paid or payable in cash to an employee if the terms of contract of employment, express or implied, were fulfilled and consequently even if an employee is suspended as per the service regulations by the employer pending enquiry it cannot be said that the employee has committed breach of any of the terms of the contract of employment. Nor can it be said C that the employer has committed breach of any of the terms of the contract of employment as the service rules applicable to the employee would be part and parcel of his conditions of employment and acting on the said service rules if the employer prohibits the employee from reporting for duty and doing actual work the employer cannot be said to be committing breach of any of the terms of the contract of employment. Thus neither party can be said to D have committed breach of any of the terms of the contract of employment when legally permissible suspension pending enquiry is imposed by the employer on the employee. Such is not a case when a lock-out or a lay-off is imposed by the employer as in case of lock-out the employer commits breach of the contract of employment by refusing to give work to the employee E for no fault of his. Similarly in case of lay-off the employees are refused work by the employer for no fault of the employees. Therefore, in either case the employer would be committing breach of the terms of the contract of employment by his own act which may be justified or otherwise. Under these circumstances, therefore, but for the inclusive part of the definition F encompassing payment made to an employee in respect of any period of lock-out or lay-off, said payment would not have been covered by the definition of 'wages' under Section 2 sub-section (22) of the Act. The first part of the said definition obviously would not apply to such a case as terms of the contract of employment cannot be said to be complied with at least by the G employer in such an eventuality. Such is not the case when employer acting as per terms of employment governing the employees suspends him pending enquiry.

It is now time for us to briefly refer to various decisions of this Court to which our attention was invited by learned counsel for the parties. In the H case of *Modella Woollens Ltd.* (supra) a Bench of two learned Judges of this

Court had to consider whether the term 'wages' as defined by sub-section (22) of Section 2 of the Act would cover production bonus. The Court observed that production bonus is nothing but remuneration for additional production which the employees have brought about. In the case of *Harihar Polyfibres,* (supra) another Bench of two learned Judges of this Court had to consider the question whether the expression 'wages' as defined by Section 2 sub-section (22) of the Act would include, amongst others, incentive allowance. Chinnappa Reddy, J. delivering the main judgment made the following pertinent observations in this connection at page 714 of the Report :

> "The Employees State Insurance Act is a welfare legislation and the definition of 'wages' is designedly wide. Any ambiguous expression is, of course, bound to receive a beneficent construction at our hands too. Now, under the definition first, whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, express or implied is wages; thus if remuneration is paid in terms of the original contract of employment or in terms of a settlement arrived at between the employer and the employees which by nece- ssary implication becomes part of the contract of employment it is wages :..."

In the case of *Indian Drugs & Pharmaceuticals Ltd. Etc.,* (supra) a Bench of two learned Judges of this Court K. Ramaswamy and G.B. Pattanaik, JJ. considered the question of overtime wages in the light of the definition of 'wages' as found in Section 2 sub-section (22) of the Act. In this connection it was observed that whatever remuneration paid or payable forms wages under implied terms of the contract. It is of course true that none of these judgments dealt with the question with which we are concerned in these appeals. However, the common thread which runs through these three judgments is to the effect that the definition of the word 'wages' should be liberally construed as the Act is a welfare piece of legislation. On the interpretation of the relevant terms found in the definition of the term 'wages', as discussed earlier, it cannot be gainsaid that anything paid even by way of subsistence allowance to an existing employee though suspended by the employer cannot but be said to be remuneration paid to him under the terms of the contract of employment if they were fulfilled by the employee as well as by the employer. However learned counsel for the respondents vehemently relied upon a Division Bench judgment of the Bombay High Court in the case

A of *Nutan Mills,* (supra) for submitting that in the light of the earlier unamended definition of the term 'wages' as found in sub-section (22) of Section 2 of the Act lay-off compensation was not held to be covered by the term 'wages'. The said decision cannot be of any assistance to learned counsel for the respondents for two obvious reasons. Firstly, the High Court was considering
B unamended definition of the term 'wages'. The Legislature made its intention clear by amending the definition and bringing in compensation for lay-off also within the scope of the inclusive part of the definition of the 'wages'. But that apart, secondly it is seen that in the said judgment Chagla, CJ., speaking for the Division Bench of the Bombay High Court in terms observed that the
C provisions of the Industrial Disputes Act make it clear that there is no relationship of master and servant during the period of lay-off. Employer has no right to dictate to the employee that the he shall present himself at his office, nor is there any obligation upon the employee so to do. During the period of lay-off the employee would be entitled to go and serve another master. The only result of his doing so would be that he would be disentitled
D to receive compensation. Therefore, during the period of lay-off the employee is no longer the servant or the workman of his employer. That relationship is suspended and that relationship would only be revived when he is reinstated under the terms of the contract. It is trite to say that in case of an employee suspended pending departmental enquiry, such legal result does not follow.
E On the contrary he continues to be the employee and the employer continues to be his employer. He has to stay at the headquarters as directed by the employer. All that happens is that during the suspension period the employee is not allowed to actually work and he is not given full remuneration but only permissible subsistence allowance by way of remuneration for remaining
F attached to the service of the employer as per the relevant service regulations governing his contract of service. Consequently the aforesaid decision of the Bombay High Court is also of no avail to learned counsel for the respondents.

As a result of the aforesaid discussion it must be held that the High Courts in the impugned judgments erred in taking the view that subsistence
G allowance was not a part of wages as defined by Section 2 sub-section (22) of the Act. It must be held that such allowance forms part of wages as per sub-section (22) of Section 2 of the Act and consequently on the said amount the employee will be liable to contribute under Section 39 by way of employee's contribution and equally the employer would be liable to contribute his share
H by way of employee's contribution on the amount of subsistence allowance

paid to the suspended employee. The appeals are allowed. The impugned judgments and orders of the High Courts in respective cases are set aside. The appellant-Corporation is held entitled to enforce the recovery of the contributions centering round subsistence allowance paid to the suspended employees concerned for the respective periods in accordance with law. No costs. A B

K.K.T. Appeals allowed.