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SUPREME COURT ON INCLUSION OF CONVEYANCE ALLOWANCE IN WAGES

A. Introduction:

Supreme Court (“**SC**”), on 8th March 2021, in *Employees State Insurance Corporation v. Texmo Industries*,¹ held that travelling allowance includes conveyance allowance and that all kinds of travelling allowances are excluded from the definition of ‘wages’ under the Employees State Insurance Act, 1948 (“**ESI Act**”).

B. Brief Facts:

1. Texmo Industries (“**Company**”) is engaged in the manufacturing of agricultural pumps and ESI Act is applicable to its factories and establishments.
2. As per Section 39 of the ESI Act, the Company is liable pay ESI contribution in respect of all its employees and to maintain records of the same.²
3. ESI Corporation (“**ESIC**”) inspected the Company’s records and detected discrepancies in the wages and consequential short payment. It ordered the Company to pay the outstanding amount with interest, including towards conveyance allowance.
4. The Company claimed that ESIC had erroneously computed the salary, by including conveyance allowance, leave salary, etc., which did not constitute ‘wages’ under the ESI Act.³
5. ESI Court passed order on 31st July 2020 (“**ESI Court Order**”) setting aside the claim in respect of conveyance allowance.
6. Aggrieved, the ESIC approached the High Court of Madras (“**HC**”), which concurred with the ESI Court Order. Aggrieved by this, the ESIC approached the SC.

C. SC Order and Reasoning:

The SC dismissed the special leave petition (**SLP**) and held that there is no infirmity at all in the concurrent findings of the HC and the ESI Court for the following reasons:

1. As per the statutory definition of wages, it must include remunerative payments and not compensatory payments and but travelling allowance has been expressly excluded from this definition.⁴

¹ MANU/SC/0384/2021.

² Section 44 of the ESI Act.

³ Section 2(22) of the ESI Act.

⁴ Paragraph 12 of the Judgement.

2. Relying on a plethora of judgements⁵ it held that: “*any Travelling Allowance or the value of any travelling concession would be outside the purview of the term 'wages', and that it would make no difference whether the Travelling Allowance was paid as part of the contract of employment, or whether it was paid in lump sum or whether it was paid at regular intervals. It would not cease to be Travelling Allowance only because it was a fixed sum paid along with the wages, as per the terms of the contract of employment.*”⁶
3. It differed from the view taken by the Karnataka High Court in the *IT Solutions* case,⁷ and opined that the definition of ‘wages’ clearly excludes travelling allowance and there is no cogent reason why conveyance allowance, which is in effect and substance the same as travelling allowance, should be treated differently from travelling allowance.⁸
4. It noticed that travelling allowance is not defined under the ESI Act or the Industrial Disputes Act, 1947 and held that the expression, in absence of any definition, must be construed as per its ordinary meaning and that ‘travel’ is used interchangeably with ‘commute.’

D. Conclusion:

The judgment highlights two important legal aspects:

1. The ESI Act is a social legislation enacted to provide benefits to employees and when there is any ambiguity in any provision, the Court would ordinarily favour a construction that would be beneficial to those for whom the legislation is enacted
2. The use of the expression “*any travelling allowance*” in the definition of wages at Section 2(22)(b) of the ESI Act makes it clear that all kinds of travelling allowance including conveyance allowance are excluded.

Based on this judgment, the ESIC has issued a circular⁹ on 8th November 2011 along with a copy of the judgment and directed its field formations “*for necessary action and strict compliance.*”

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⁵ *Management of Oriental Hotels Ltd., Chennai v. Employees' State Insurance Corporation, Chennai* MANU/TN/0491/2000; *Regional Director, ESI Corporation v. Sundaram Clayton Ltd.* MANU/TN/1930/2003; and *Regional Director, ESI Corporation, Thrissur v. Royal Plastics Industries, Aluva* MANU/KE/2410/2014

⁶ Paragraph 18 of the Judgement.

⁷ *Regional Director, Employees State Insurance Corporation v. M/s. IT Solutions (India) Private Limited* MANU/KA/0405/2002.

⁸ Paragraph 21 of the Judgement.

⁹ <https://www.esic.nic.in/attachments/circularfile/db78efb67a3b86b39695071ae02f5dd7.pdf>