

Mohammad
Ishaq
v.
Mohammad
Ahmad and
and another,

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being concurrently available does not *per se* and by itself, show that one of them operates, as a matter of abstract rule of law, in derogation of the other, and indeed this is not the respondents' contention.

12. In view of the above discussion, in my opinion, this appeal deserves to be allowed. I accordingly accept the appeal and, setting aside the order of the learned Additional District Judge, restore that of the Court of first instance. In the circumstances of the case, the parties are directed to bear their own costs in this Court. The cross objections with respect to costs in the courts below are hereby dismissed with no costs.

K.S.K.

CIVIL MISCELLANEOUS.

Before Shamsher Bahadur, J.

THE BIRLA COTTON SPINNING AND WEAVING
MILLS,—Appellant.

versus

SUMER CHAND,—Respondent.

F. A. O. 38-D of 1954.

1960
August, 18th.

Employees' State Insurance Act (XXXIV of 1948)—Section 40(2)—Employee's contribution made by employer for the period of authorised leave without pay of the employee—Whether can be recovered by deduction from his wages—Period—Meaning of—Whether means a week or a month for which wages are paid. ...

Held, that there is an absolute bar under sub-section (3) of section 40 of the Employees State Insurance Act, 1948 to the employer deducting the employer's contribution from any wages payable to an employee or otherwise to recover it from him. It is only in case of the contribution made on behalf of the employee that sub-section (2) of

section 40 would permit of a deduction in certain circumstances. The intention of the Legislature manifestly was that the employer should be given the right to make a deduction for the contributions made on behalf of the employee. The Act is not unmindful of the occasions when an employee may be obliged to take leave without pay and in such contingency the employee is also exempted from making his insurance contribution. To preserve the continuity of the contribution period and to enable an employee to avail of the benefits, it has been made obligatory that his contribution shall be payable under subsection (5) of section 42 when he is on authorised leave.

Held further, that the contribution is recoverable from the employee only when something is to be paid to him in respect of the period for which the contribution was made. That is the cardinal point in the scheme of the Act and an employee would be deprived of its benefits if the contribution is made deductible from his wages for a period for which he has not actually been paid. 'Week' is used everywhere in the Act as the unit period of contribution. From the provisions of the Act, it appears that the Legislature was particularly solicitous in providing this privilege to the employee that the deduction would never be made from any source but his wages and that too in respect of the period for which the contribution was made. It follows that the employer who has made contribution on behalf of the employee for the period during which he was on authorised leave without pay can recover it from his wages for the week for which contribution was made and not from his wages for any other period, notwithstanding that he is paid wages on monthly basis.

First Appeal from the order of Shri Hans Raj, Senior Sub-Judge, Delhi, as Judge Employees' State Insurance Court, Delhi, dated 10th January, 1954, ordering refund of deduction amount to Banko Lal.

MR. D. K. KAPUR, ADVOCATE, for the Petitioner.

JUDGMENT

SHAMSHER BAHADUR, J.—The question which has arisen in this appeal relates to the construction of the word "period" in the Employees' State Insurance Act; a question on which there being no

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reported authority of any Court, has to be decided *res integra*. It is a matter of regret that the respondent has not chosen to be represented in this appeal which has been argued with fairness by Mr. Kapur, the learned counsel for the appellant.

The facts and the relevant provisions of the Employees' State Insurance Act (hereinafter to be referred to as the Act) may now be briefly set out. Bankey Lal, an employee of the appellant, which is the Birla Cotton Spinning and Weaving Mills, Delhi, was on "authorized leave" without pay for the following three periods :—

- (1) From 17th to 30th of November, 1952,
- (2) From 1st to 14th of December, 1952, and
- (3) From 22nd to 28th of December, 1952.

Under the Act, all employees in factories or establishments have to be insured and the contributions both on behalf of the employer and the employee have to be paid under sub-section (1) of section 40 of the Act by the principal employer, who admittedly is the Birla Cotton Spinning and Weaving Mills. Under sub-section (2) of section 40, the principal employer "shall be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise." The proviso to this sub-section is of crucial importance and may be reproduced in full :—

"Provided that no such deduction shall be made from any wages other than such as related to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period."

The controversial question in this appeal centres round the meaning which should be attached to the word "period".

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The employee being on leave without pay, the contributions in respect of the periods for which he was absent were paid on behalf of the employee by the appellant, who sought to make deduction from the wages which fell due to the employee for the month of December, 1952. The learned Senior Subordinate Judge, acting as the Employees' State Insurance Court, Delhi, disallowed the deduction basing his decision on the proviso to sub-section (2) of section 40 of the Act. The Birla Cotton Spinning and Weaving Mills has preferred this appeal which has been argued by Mr. Kapur.

The relevant provisions regarding the payment of contributions are reproduced below :—

"39. (1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's Contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at the rates specified in the First Schedule.

(3) A week shall be the unit in respect of which all contributions shall be payable under this Act.

(4) * * * *

42. (1) * * * *

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- (2) Contributions (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each week during the whole or part of which an employee is employed.
- (3) Where wages are payable to an employee for a portion of the week, the employer shall be liable to pay both the employer's contribution and the employee's contribution for the week in full but shall be entitled to recover from the employee the employee's contribution.
- (4) No contribution shall be payable in respect of an employee for any week during the whole of which no services are rendered by an employee and in respect of which no wages are payable to.
- (5) Notwithstanding the provisions of sub-section (4), contribution shall be payable in respect of any week during which no services are rendered by and no wages are paid to an employee, at the rate at which contribution was last paid, where the failure to render such services is due to the employee being on authorized leave”.

It has been made clear in sub-section (4) of section 42 that an employee will not be liable to make any contribution in respect of a week for which he has been paid no wages. The exception made in sub-section (5) makes it obligatory on the employer to make the contribution on behalf of the employee who is on authorized leave. Admittedly, Bankey Lal was on authorized leave for the three periods when his contribution was paid by

the employer. Under sub-section (2) of section 40, the principal employer is entitled to recover from the employee the employee's contribution by deduction from his wages *and not otherwise*. There is, thus, an interdict placed on the employer against any deduction from an employee except from his wages. Admittedly, no wages were paid to the employee in respect of period for which the contributions were made. Two conditions have to be satisfied before an employer is entitled to deduct the employee's contribution. The deduction must come from the wages of the employee and secondly, "no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable." The appellant would, thus, be able to make the deductions only if the two conditions mentioned in sub-section (2) of section 40 and its proviso are complied with.

The word "period" has not been defined anywhere in the Act though the terms "benefit period" and "contribution period" have been defined in sub-sections (2) and (5) of section 2, respectively. The terms "benefit period" and "contribution period" have been used in Chapter V which deals with claims for cash benefits. It is to be observed that this Chapter deals with the various benefits which the employee is to derive from the scheme of insurance envisaged in the Act. An employee is entitled to disablement benefit, sickness benefit, maternity benefit, dependents' benefit, etc. Mr. Kapur contends on behalf of the company that as the payment is made to the employee on monthly basis, the deduction can be made from the monthly wages which became payable to the employee.

It is significant to observe that contributions are to be made under sub-section (2) of section 42

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of the Act for each week during the whole or part of which an employee is employed. Sub-section (3) of section 39 makes a week the unit "in respect of which all contributions shall be payable under this Act." In Schedule I also, the contributions are made on weekly basis. Under Explanation IV to clause 2 of Schedule I, "Wage period" is defined to mean the period in respect of which wages are ordinarily payable whether in terms of the contract of employment, express or implied, or otherwise.

If the word "period" used in the proviso to sub-section (2) of section 40 is relatable to the week for which the wages are payable, then, as conceded by Mr. Kapur, no deduction can be charged by the appellant in respect of the contributions made by it on behalf of the employee under sub-section (5) of section 42. If, on the other hand, the word "period" is wide enough to cover the monthly wages which are actually being paid to the employee by the appellant-company, then, according to the clear language of the proviso, deduction justifiably be made from the employee's wages in respect of the month of December, 1952.

There is an absolute bar under sub-section (3) of section 40 of the Act to the employer deducting the employer's contribution from any wages payable to an employee or otherwise to recover it from him. It is only in case of the contribution made on behalf of the employee that sub-section (2) of section 40 would permit of a deduction in certain circumstances. The intention of the Legislature manifestly was that the employer should be given the right to make deduction for the contributions made on behalf of the employee. The Act is not unmindful of the occasions when an employee may be obliged to take leave without

pay and in such contingency the employee is also exempted from making his insurance contribution. To preserve the continuity of the contribution period and to enable an employee to avail of the benefits, it has been made obligatory that his contribution shall be payable under sub-section (5) of section 42 when he is on authorized leave.

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It seems to me that the contribution is recoverable from the employee only when something is to be paid to him in respect of the period for which the contribution was made. That is the cardinal point in the scheme of the Act and an employee would be deprived of its benefits if the contribution is made deductible from his wages for a period for which he has not actually been paid. "Week" is used every where in the Act as the unit period of contribution. From the provisions of the Act, it appears that the Legislature was particularly solicitous in providing this privilege to the employee that the deduction would never be made from any source but his wages and that too in respect of the period for which the contribution was made. It seems impossible for me to reconcile either of these two conditions with the claim which has been made on behalf of the company, and in my view the decisions of the Tribunal is correct.

This appeal fails and is dismissed. I would, however, make no order as to costs.

R.S.

APPELLATE CIVIL.

Before Prem Chand Pandit, J.

GIAN CHAND SHARMA,—*Appellant.*

versus

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