CASE NO.:
Appeal (civil) 8567 of 1997
Appeal (civil) 8568 of 1997

PETITIONER:
SHREE CHANGDEO SUGAR MILLS & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT: 09/01/2000

BENCH:
S.R.Babu, S.N.Variava

JUDGMENT:

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J U D G M E N T

S. N. VARIAVA, J.

These Appeals are against the Judgment dated 23rd September, 1997. Briefly stated the facts are as follows: The Appellant claimed that they had ceased operation from 1984. In Suit No. 1937 of 1985, filed by Bank of Madura, Court Receiver, High Court Bombay was appointed as Court Receiver for all the assets of the Appellant's Company on 28th November, 1985. The workers, through their Unions filed various proceedings before the Labour Court, claiming their arrears of wages, retrenchment benefits, terminal benefits etc. A number of Awards came to be passed by the Labour Court. The workers carried their dispute all the way upto this Court. On 21st March, 1988, this Court passed an order wherein, inter alia, directions were issued to the High Court to look into the question whether there was any scope for restructuring the mill and if there was no scope for restructuring the mill, then to close down the same so that the employees could be retrenched with effect from a particular date to be indicated by the High Court in its Order. On 12th December, 1988, the High Court fixed 31st October, 1988 as the date when the services of the employees was to stand terminated/retrenched. The Court Receiver was directed to notify this date as the date of retrenchment of the workers. On 2nd December, 1995 the Appellant Company entered into a Memorandum of Settlement with its workers, wherein it was agreed that the workmen whose services were terminated/retrenched with effect from 31st October, 1988 would be paid their dues on or before 31st March, 1996. It was also agreed that even though the amount payable was Rs.1,23,03,947.07 the Union would accept a sum of Rs.1,10,00,000/- towards settlement of dues. Clause 5 of the Settlement is relevant. It reads as follows : "5. The amount of Rs. 1,10,00,000/- to be paid by the Company shall

be distributed in the following manner:

Total wages 35,00,000.00

Towards retaining (Seasional Wages) 10,00,000.00

Towards Gratuity 50,00,000.00

Towards Retr enchment Compensation 15,00,000.00

---------- Rs. 1,10,00,000.00

The Short fall under one head may be adjusted by paying from the excess amount under any other head. No other deduction except Union's contribution of 7% as stipulated hereinafter is permissible."

The 2nd Respondent declined to exempt the Appellant Company from payment of Provident Fund on the wages paid by the Company under the said Settlement. Thus Provident Fund was claimed on the sum of Rs. 35 lakhs i.e. the wages. The Company claimed that since this was an ad hoc payment Provident Fund was not deductible on this sum. This was not accepted by the 2nd Respondent. The Appellants therefore preferred a Writ Petition in the High Court of Bombay which came to be dismissed on 12th August, 1997. Their Letters Patent Appeal came to be dismissed by the impugned Judgment dated 23rd September, 1997. Mr. Sharma has submitted that with effect from 1984 the Company was closed. He submitted@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ that admittedly Court Receiver, High Court Bombay took@@ JJJJJJJJJJJJJJJJJJJJJ charge of all the assets with effect from 28th November, 1985. He submitted that the Workmen had, therefore, done no work and were not on duty from 1984. He submitted that on 22nd December, 1995, under the Settlement with the Union, the Workmen had agreed to accept a lump sum of Rs.1,10,00,000/- in full and final settlement of all their claims. He submitted that this was an ad hoc amount being paid under the Settlement. He submitted that on such ad hoc payment there can be no provident fund. He relied upon definition of the term "basic wages" as given in Section 2(b) of the Employees' Provident Funds Act and submitted that the basic wage only included emoluments which were earned by an employee while on duty. He submitted that therefore ad hoc payment made under a Settlement would not be a basic pay. He further submitted that as the workers were not working since 1984 it could not be said that they were on duty. He submitted that what was paid under the Settlement remained an ad hoc payment and that there could be no claim for deduction of Provident Fund on the amounts paid under the Settlement. In support of his submission he relied upon the case of Burmah Shell Oil Storage and Distributing Co. Ltd. vs. Regional Provident Fund Commissioner, Delhi reported in 1981 (2) L.L.J. 86. In this case it has been held that a settlement allowance is not a basic wage. He also relied upon the case of Bridge & Roof Co. (India) Ltd. vs. Union of India reported in 1963 (3) S.C.R. 978. In this case the question was whether production bonus payable as part of a contract of employment was basic wage within the meaning of Section 2(b) of the Employees Provident Funds Act, 1952 It was held that production bonus was a kind of incentive and would,

therefore, not be a basic wage He also relied upon the case of Dinesh Khare vs. Industrial Tribunal, Jaipur and others reported in 1982 (2) L.L.J. 17, wherein one month's wages were paid to a workman under Section 33(2) (b) of the Industrial Disputes Act. The question was whether provident fund was deductible on this amount. The Court held that this was in the nature of a notice pay and was, therefore, not a basic wage within the meaning of Section 2(b) of the Employees' Provident Funds Act and therefore, provident fund was not deductible on this amount. He also relied upon the case of India United Mills Ltd. v. Regional Provident Fund@@
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Commissioner Bombay and others reported in AIR 1960 Bombay@@
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203. In this case also the question was whether payment made to a workman for termination of his service in lieu of a notice would be a basic wage within the meaning of Section 2(b) of the Employees' Provident Funds Act. It was held that the amounts paid as notice pay for termination do not fall within the term basic wage it. and, therefore, provident fund cannot be deducted on Based on the above authorities it was submitted that as this was merely an ad hoc payment made under a Settlement it was not a basic wage and no deduction towards Provident Fund could be made on this payment. We are unable to accept the submissions. Undoubtedly contribution towards Provident Fund can only be on a basic wage. However, it is not at all necessary that the workman must actually be on duty or that the workman should actually have worked in order to attract the provisions of the Employees' Provident Funds Act. For example, there may be a lockout in a Company. During the period of lockout the workmen may not have worked yet for the purpose of the Employees' Provident Funds Act they will be deemed to have been on duty and Provident Fund would be deductible on their wages. In this case by order dated 12th December, 1988, the High Court (pursuant to directions of this Court) fixed 31st October, 1988 as a date when the services of the employees stood terminated/retrenched. Thus upto 31st October, 1988 the employees were in service of the Appellant Company. They were, therefore, deemed to be on duty upto 31st October, 1988. As set out above many of these employees had raised claims before the Labour Court and there were Awards of the Labour Court for payment of arrears of wages and retrenchment compensation. All that the Settlement did was that, by Agreement, the total claim of the workmen was reduced to a certain extent. Amongst the claim of the workmen was a claim for wages upto 31st October, 1988. This was a claim for wages for a period during which they were on "deemed duty". Clause 5 of the Settlement, which has been set out herein above, shows that a sum of Rs. 35 lakhs has been paid towards Wages and another sum of Rs. 10 lakhs has been paid towards Retaining (Seasional) wages. These are amounts which are paid for wages during a period when the workmen are deemed to be on duty. Therefore it is Basic Wage within the meaning of Section 2 (b) of the Employees' Provident Funds Act. All the cases relied upon by Mr. Sharma are of no assistance to him as in those cases the amounts were clearly not Basic Wages. In this case the above mentioned two sums of Rs. 35 lakhs and Rs. 10 lakhs are wages.

Mr. Sharma lastly submitted that the Settlement dated 2nd December, 1995 clearly provided that there were to be no@@
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deductions, except Unions contribution of 7%. He submitted

that even though the Appellant Company could not deduct Provident Fund from the wages paid to the employees they are now being made liable to pay to the 2nd Respondent even the employees share. He submitted that, even if it is held that the Appellant Company is liable to pay Provident Fund, they should not be made to now contribute the employees share as they could not and have not deducted the same from the wages paid. We are unable to accept this submission also. It is the duty of the employer to contribute. The employers agreement, with the employee, not to deduct does not discharge the employer of his obligation in law to make payment. The term of the settlement which provides that there shall be no deduction only means that the Appellant Company has agreed to take on this liability also. We, therefore, find no infirmity in the order of the learned Single Judge or the Division Bench of the High Court. These Appeals accordingly stand dismissed. There will be no order as to costs.