

GAHC010001012022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/19/2022

THE NATIONAL EDUCATIONAL SOCIETY
AMINGAON, BONDA, NARENGI, GHY-28, ASSAM OWNER OF NATIONAL
SCHOOL, AMGAON, BORDA, NARENGI, GHY-28, DIST- KAMRUP METRO,
ASSAM, REP. BY ITS SECRETARY

VERSUS

THE EMPLOYEES STATE INSURANCE CORPORATION AND 2 ORS.
NORTH EASTERN REGION, BAMUNIMAIDAM, GUWAHATI-26, DIST-
KAMRUP METRO, ASSAM

2:THE ASSISTANT DIRECTOR

AUTHORIZED OFFICER
EMPLOYEES STATE INSURANCE CORPORATION
NORTH EASTERN REGION
BAMUNIMAIDAM
GUWAHATI-26
DIST- KAMRUP METRO
ASSAM

3:THE RECOVERY OFFICER

AUTHORIZED OFFICER
EMPLOYEES STATE INSURANCE CORPORATION
NORTH EASTERN REGION
BAMUNIMAIDAM
GUWAHATI-26
DIST- KAMRUP METRO
ASSA

Advocate for the Petitioner : MR. O P BHATI

Advocate for the Respondent : SC, ESIC

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 05.10.2023

(L.S.Jamir, J)

Heard Mr. P.Sharma, learned counsel for the appellant. Also heard Mr. M.Smith, learned counsel appearing for all the respondents.

2. Being aggrieved, by the order dated 26.11.2021, passed by the learned Single Judge in WP(C)/5822/2016, the present appeal has been filed by the appellant/writ petitioner.

The relevant portion of the order dated 26.11.2021 reads as under:

“5. I have carefully perused the Judgment and I respectfully concur with the findings arrived at by the Co-ordinate Bench. However, the findings of the Coordinate Bench in Para-21 of the Judgment that the operation of the impugned notification, in my respectful opinion, cannot be made applicable in all cases. Such a finding was rendered perhaps keeping in view, the facts and circumstances of that case. However, in the facts of the present proceedings, the same cannot be made applicable as the school in question i.e. the petitioner herein, has been closed since 01.04.2015 as per statement made in Para-1 of the writ petition.”

3. The respondents Nos. 1, 2 and 3 has filed an affidavit-in-opposition in the present writ appeal and para 4 of the said affidavit-in-opposition reads as

under:

“4. That the deponent begs to state that after the passing of the Judgment and Order dated 28/01/2016 by the co-ordinate Bench of this Hon’ble Court in WP(C) No.4121/2009, WP(C)/6311/2010, WP(C)/5183/2012, WP(C)/4259/2012, WP(C)/352/2013 (All Assam English Medium School Association and Ors); the respondent Corporation has agreed to adhere to the said Judgment and Order passed by this Hon’ble Court and has agreed that no recovery under the ESIC Act from Educational Institutions and Schools will be made retrospectively i.e. from 28/01/2016. And hence, the respondent Corporation undertakes not to make any recovery in accordance to the impugned notice dated 30.06.2015, from the Writ Appellant/Petitioner.”

4. It is the submission of the learned counsel for the respondents that the Corporation undertakes not to make any recovery in accordance to the impugned notice dated 30.06.2015 from the writ appellant/petitioner. However, they seek liberty to assess fresh ESI contribution from the appellant/petitioner after 28.01.2016 i.e., prospectively from the date of passing of the judgment and order dated 28.01.2016 in WP(C)/4121/2009 and batch of other writ petitions.

5. The submission made by the learned counsel for the respondents is accepted by the learned counsel appearing for the appellant.

In view of the concession made by the learned counsel for the respondents and on acceptance by the learned counsel for the appellant, this writ appeal is accordingly disposed of by directing that no recovery under the ESIC Act shall be made retrospectively with effect from 28.01.2016 from the appellant society.

However, liberty is granted to the respondents to assess fresh ESI contribution from the appellant society after 28.01.2016.

6. With the aforesaid directions, the impugned judgment dated 26.11.2021 passed in WP(C)/5822/2016 stands modified.

Writ appeal is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant