

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WA.No. 2000 of 2014 () IN WP(C).30099/2014

AGAINST THE JUDGMENT IN WP(C) 30099/2014 of HIGH COURT OF KERALA
DATED 21-11-2014

APPELLANT(S)/PETITIONER:

T.J FAISAL
PROPRIETOR, COROMANDAL CLAYS, KOCHUVELI
THIRUVANANTHAPURAM.

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
DEPARTMENT OF LABOUR AND REHABILITATION
THIRUVANANTHAPURAM, PIN-695001.
2. THE DIRECTOR
THE EMPLOYEES STATE INSURANCE CORPORATION, THYCAUD
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR
THE EMPLOYEES STATE INSURANCE CORPORATION
SUB REGIONAL OFFICE, KOLLAM-691001.
4. THE INSPECTOR
THE EMPLOYEES STATE INSURANCE CORPORATION
DIVISIONAL OFFICE, KURUMPELIL AVENUE, POLAYATHODE
KOLLAM-691001.

R2-4 BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, ESI CORPN.
BY ADV. SRI.K.M.ABDUL MAJEED
BY GOVERNMENT PLEADER SRI DHANESH MATHEW MANJOORAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ami/

V.K.MOHANAN & P.D.RAJAN, JJ.

W.A.No.2000 of 2014

Dated this the 21st day of January, 2015.

J U D G M E N T

Mohanana, J.

This appeal is preferred against the judgment dated 21.11.2014 in W.P.(C)No.30099/14 by the petitioner therein as the learned Single Judge relegated the petitioner to approach the Statutory Appellate Authority under Section 45-A A of the Employees' State Insurance Act, 1948, (hereinafter referred to for short as 'ESI Act' only) discarding the relief sought for by the petitioner.

2. The main grievance of the appellant/petitioner is against Ext.P1 order in the writ petition, issued under section 45-A of the ESI Act. According to the petitioner, prior to the amendment of Section 45-A, the petitioner has got an appeal remedy under section 75 of the said Act. But the learned single Judge was of the opinion that the petitioner has not invoked the appeal provision of Section

75 of the ESI Act. Another grievance projected by the appellant is that the contention of the petitioner, that no opportunity was given to him before passing Ext.P1 order, was also repelled by the learned Single Judge. Another contention of the learned counsel for the petitioner is that, as per the second proviso to Section 45-A of ESI Act, the Corporation is not authorised to pass any order in respect of a period beyond five years from the date on which the contribution become payable. These are the three grounds mainly urged before the learned Single Judge. However, the learned Single Judge by observing that, appeal remedy is available to the petitioner, dismissed the writ petition, particularly in the light of the decisions in **Assistant Commissioner of Central Excise v. Krishna Poduval (2005(4) KLT 947)** and **Panopharam v. Union of India (2010(3) KLT 149)**. However, in the said judgment, the learned Judge has already found that the petitioner has got the opportunity to file an appeal under Section 45-A A of the

ESI Act. It is against the above finding and order of the learned Judge, the petitioner therein preferred this writ appeal.

3. We heard Sri.Biju Balakrishnan, learned counsel for the appellant and Sri.T.P.M.Ibrahim Khan, learned senior counsel for respondents 2 to 4.

4. The learned senior counsel by filing a counter affidavit on behalf of respondents 2 to 4 submitted that, as correctly observed by the learned Judge, the appellant/petitioner can very well approach the appellate authority under Section 45-A A of the ESI Act, provided, the appellant depositing the admitted arrears, as evidenced by Exts.P4 to P7 and in case the said amount is deposited and an appeal is filed accordingly, the delay that may occur in filing the said appeal can be condoned. The above submission of the learned senior counsel is recorded. In view of the submission of the learned senior counsel Sri.T.P.M.Ibrahim Khan/Standing counsel for ESI, the learned counsel for the

appellant submitted that, the appellant is ready to file an appeal under section 45-A A of the ESI Act.

5. In the light of the submission of the learned senior counsel appearing for the ESI Corporation and in view of the submission of the learned counsel for the appellant and particularly when an appeal provision under section 45-A A of ESI Act is left open to the appellant, we are inclined to relegate the appellant to pursue for such appeal remedy and to dispose the said appeal accordingly.

In the result, this appeal is disposed of directing the appellant to file an appeal under section 45-A A of the ESI Act within one month from today and in case such an appeal is filed, the 2nd respondent/appellate authority is directed to consider the same on merit and pass appropriate orders, after giving an adequate opportunity to the appellant of being heard and the 2nd respondent is directed to entertain such appeal irrespective of the delay, if any, in filing the appeal, provided, the petitioner depositing the entire

amount admitted as per Exts.P4 and P7 on the date of filing the appeal. Till the disposal of the said appeal, the respondents are directed not to take any coercive steps against the appellant herein.

Writ appeal is disposed of accordingly.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

ami/

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P.A.to Judge