

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No.219 of 2016

Date:22.03.2016

Between:

M/s. Pratibha Vidyaniketan High School,
HIG 5, Phase-III, Kukatpally,
Hyderabad and another.

.....Appellants/
Petitioners

and

The State of Telangana, rep.by Secretary to Government,
Labour, Employment Training and Factories Department,
Secretariat, Hyderabad and another.

.....Respondents/
respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

WRIT APPEAL No.219 of 2016

PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Petitioners are the appellants. Parties are referred to as arrayed in the writ petition. Heard Sri P.Shanker Rao Patil, learned counsel for the petitioners, learned Government Pleader for Labour (TG) and Sri B.G.Ravinder Reddy, learned standing counsel for respondent No.2.

2. State in exercise of power vested by Section 1(5) of the Employees State Insurance Act, 1948) (hereinafter referred to as 'Act, 1948'), extended the provisions of the Act, 1948 to private educational institutions run by the individuals, trustees, societies or other organizations and medical institutions, which include corporate, joint sector, trust, charitable and private ownership hospitals, nursing homes, diagnostic centers, pathological labs, the notification of which was published vide Gazette Notification No.582, Labour, Employment, Training and Factories Department, dated 14.10.2008.

3. Petitioners challenged the said notification in the instant writ petition. On same issue batch of writ petitions are filed. The challenge was laid on the ground that educational institutions cannot be classified as industrial, commercial, agricultural establishments or otherwise and as such the provisions of the Act, 1948, cannot be extended to educational institutions. It was contended that the establishments as envisaged in Section 1(5) of the Act, 1948 are those which carry on business, trade, or profession or any work in connection with or identical or ancillary to any business, trade or profession.

4. On detailed consideration of the provisions of the Act, 1948 and the precedents relied upon by the respective parties, learned single Judge held that the provisions of the Act, 1948 are validly extended to the educational institutions and, therefore, there is no illegality in the impugned notification.

5. We are in respectful agreement with the reasons assigned by learned single Judge in upholding the impugned notification. It is appropriate to note that provision in Section 1(5) of the Act, 1948 is not under challenge.

6. Having confronted with the mandate of Section 1(5) of the Act, 1948, which is not under challenge, learned counsel alternatively submits that no

contributions were made on account of the interim orders granted by this Court and it is not possible to make contributions since the petitioners do not have the particulars of the employees who worked earlier with them, left the organizations during the pendency of writ petition and, therefore, petitioners should be exempted from making contributions till the date of judgment.

7. This very contention is also urged before the learned single Judge and on consideration of the provisions of the Act and having regard to the object of the Act, 1948, the contention of the petitioners was not accepted. Learned single Judge also held that even otherwise no relief can be granted as none of those employees are parties to the writ petitions. The Act, 1948 is a welfare legislation and it is mandatory for the employer to comply with the provisions of the Act, 1948.

8. It is needless to observe that if there are genuine constraints in complying with any of the provisions of the Act, 1948, it is always open to the petitioners to apply to the competent authority to grant appropriate relaxation/exemption. As and when such an application is made, it is always open to the competent authority to examine the said request strictly in accordance with the provisions of the Act, 1948 and to take appropriate decision as warranted there under. However, on the ground of some individual constraints in complying with the mandate of the Act, neither the notification can be invalidated nor the application of the notification can be made prospective from the date of decision by the learned single Judge.

9. We see no error in the decision arrived at by the learned single Judge warranting interference. Writ Appeal merits no consideration and it is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions if any pending in the writ appeals shall stand closed.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date:22.03.2016

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