

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION No.40912 of 2016**

**ORDER :**

Heard the learned counsel for petitioner and Sri B.Mayur Reddy, learned Standing Counsel for respondents.

2. This Writ Petition has been filed declaring the action of the respondents in issuing letter dt.02-09-2016 of the 4<sup>th</sup> respondent advising the petitioner, who is a contractor engaged by respondents, to produce proof of paying Employees Contribution towards P.F., E.D.L.I.F. and E.S.I. etc. in respect of workers engaged by him and also stating that wages paid to the workers earlier should be corroborated by producing proof of issuance of cheques to avoid audit objections.

3. It is not in dispute that the persons who are engaged by petitioner were retired employees of the RTC and they were engaged as Traffic Guides. Admittedly, such retired employees would not be covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") in view of Section 2 (ff) of the Act.

4. As regards E.S.I., it is not disputed that the RTC has been exempted from the operation of E.S.I. Act since it provides medical facilities to both of its working and retired employees. It is probably by oversight that a clause requiring payment of ESI contributions was

introduced in the contract between the parties overlooking the type of persons employed through the petitioner as Traffic Guides.

5. As regards Employees Deposit Link Insurance Scheme, 1976 contributions (EDLIS) are concerned, paragraph 2(c) thereof makes the provisions of the Act applicable and this would also not apply to retired employees.

6. Therefore, the insistence by respondents that petitioner produce proof of petitioner's contribution towards P.F., E.D.L.I. and E.S.I. to the employees engaged by it is arbitrary and contrary to law since petitioner cannot be compelled to do something which is impossible for him to do.

7. Coming to the question of producing proof of payment through cheques to the workers engaged by petitioner is concerned, there is no prohibition in law for making such payments which are supported by advance receipts or receipts. Therefore, insistence of this requirement also is not permissible.

8. Though learned counsel for respondents sought to contend that the payment is required to be made in the presence of representative of the RTC to ensure that the payments ultimately reach the workmen, that is not the reason assigned in the impugned proceedings and such a requirement also may be unnecessary since it is not the case of respondents that any person engaged by petitioner has made any complaint of non-receipt of wages.

9. Accordingly, the Writ Petition is allowed, the impugned proceedings is set aside and respondents are directed to pay the amounts payable to petitioner without insistence on these requirements within four (04) months from the date of receipt of a copy of this order. No costs.

10. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date : 08-12-2016

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