

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

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THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.1308 of 2017
and
CMP.No.18191 of 2017

Pioneer College of Arts and Science
rep. by its Principal
S.Mahendran Appellant

vs.

- 1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Labour and Employment Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The E.S.I. Regional Corporation,
rep. by its Regional Director,
143, Sterling Road,
Chennai - 600 034.
- 3.The ESI - Sub Regional Officer,
rep. by its Deputy Director,
1897, Trichy Road,
Ramanathapuram,
Coimbatore - 641 045. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 29.08.2017 passed by a learned Single
Judge of this Court in W.P.No.23109 of 2017.

Writ Prayer:- Writ petition filed Under Article 226 of the
Constitution of India praying to issue writ of Certiorari to
call for the records pertaining to the impugned G.O.Ms. No.237
Labour and Employment (K1) dated 26.11.2010 passed by the 1st
Respondent and the consequential proceedings of the 3rd
Respondent in Ref. No.56001117610001303/ INS IV / Cbe dated
09.08.2017 and to quash the same

For Appellant	: Mr.S.Gunalan
For R1	: Mr.P.S.Sivashanmuga Sundaram, SGP

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard Mr.S.Gunalan, learned counsel for the appellant and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing for the first respondent and perused the materials placed before this Court.

2.This Writ Appeal has been directed against the order dated 29.08.2017 passed by a learned Single Judge of this Court in W.P.No.23109 of 2017.

3.For the sake of convenience, the parties are referred to as per their rank in the writ petition.

4.In the aforesaid writ petition, the petitioner has challenged the order of the first respondent in G.O.Ms.No.237, Labour and Employment (K1) Department, dated 26.11.2010, whereby, the Government extended the provisions of the Employees State Insurance Act, 1948 (Central Act XXXIV of 1948) (for short 'the Act') to the educational institutions (excluding Government and Government aided institutions) run by individuals, trustees, societies or other organizations, wherein, twenty or more persons are employed or were employed on any day of the proceeding twelve months, with effect from the date of publication of the notification. The consequential proceedings of the third respondent dated 09.08.2017, calling upon the petitioner College to produce a copy of the stay order, was also sought to be quashed.

5.It is the case of the petitioner - Pioneer College of Arts and Science, Coimbatore that it is an unaided educational institution and is permitted to collect fees from the students for the purpose of paying salary to the staff etc. It is a non-commercial and non-profitable institution and is being run by the charitable and educational Society. According to the petitioner, the impugned notification, extending the provisions of the Act to them is arbitrary and in violation of Article 14 of the Constitution of India, as the same is excluded in respect of the Government and Government aided institutions.

6.By the order impugned herein, the learned Single Judge dismissed the aforesaid writ petition, the relevant portion of which, is extracted hereunder:

"2. The Hon'ble Supreme Court of India dismissed a batch of cases filed in SLP(C) No.28285 of 2009 etc., dated 15th March, 2016. By following the orders of the Hon'ble Supreme

Court of India, this Court passed final orders on 20th March, 2017 in Writ petition No.42247 of 2016 as hereunder:

"The only challenge sought to be made in this writ petition is to the coverage of employee state insurance qua the private educational institution.

2. When the matter is taken up for hearing, learned counsel appearing for respondents 2 and 3 submits that the issue has been dealt with finally by the Apex Court in a batch of cases in SLP No.28285 of 2009 etc. and by order dated 15.03.2016, it has been held that private educational institutions are also bound to pay the employee state insurance contribution.

3. In such view of the matter, the writ petition stands dismissed. However, taking into consideration the pendency of the writ petition and the difficulties expressed by the petitioner, the arrears of ESI contribution as on today is ordered to be paid by the petitioner in 12 equal monthly instalments. It is made clear that the order would cover the past arrears till the month of March, 2017 and thus from the month of April, 2017, the petitioner is bound to pay the ESI contribution on regular basis. No costs. Consequently, connected miscellaneous petitions are closed."

3. In view of the above orders passed by this Court, the writ petition stands dismissed. However, there shall be no orders as to costs. Consequently, the connected miscellaneous petition is also closed."

7. Having regard to the admitted fact that the petitioner College is a private educational institution, we do not find any reason to interfere with the order so passed by the learned Single Judge, as the issue involved herein is covered by the decision of the Hon'ble Supreme Court in a batch of cases in SLP (C) No.28285 of 2009 etc. dated 15.03.2016, wherein, it has been held that the private educational institutions are also bound to pay the Employee State Insurance contribution. Therefore, the petitioner College has to pay the ESI contribution to the authority concerned, in accordance with law.

8.However, as regards the payment of arrears of ESI contribution by the petitioner College, the order of the learned Single Judge is silent. As such, following the earlier order of this Court in WP.No.42247 of 2016 dated 20.03.2017, which was referred to by the learned Single Judge in the order, which is impugned in this writ appeal, we direct the petitioner College to pay the arrears of ESI Contribution till the month of October 2017, in twelve (12) equal monthly instalments. It is made clear that the petitioner College shall continue to pay the ESI contribution on regular basis from the month of November, 2017 onwards.

9.Accordingly, the order of the learned Single Judge is modified and the writ appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Labour and Employment Department,
Secretariat, Fort St. George, Chennai - 600 009.

+1cc to Mr.S.GUNALAN Advocate, S.R.No. 75822

सत्यमेव जयते W.A.No.1308 of 2017

SS (CO)
TR(11/12/2017)

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