

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.4494/2017 & WMP Nos.4718 & 4719/2017

M/s.Vailankanni Matriculation Higher
Secondary School rep.by its Secretary,
Mrs.Vailankanni Vijay,
No.5, Ashta Lakshmi Nagar,
Valasaravakkam,
Chennai 600 087. .. Petitioner

Vs

- 1 The State of Tamil Nadu rep.by its
Principal Secretary,
Labour and Employment Dept.,
Fort St.George,
Chennai 600 009.
- 2 Employees' State Insurance Corporation,
Rep.by its Deputy Director,
"Panchdeep" Sherling Road,
Nungambakkam, Chennai 600 034.
- 3 The Recovery Officer,
O/o.REcovery Office,
Employees"State Insurance Corporation
"Panchdeep" Sherling Road,
Nungambakkam,
Chennai 600 034. सत्यमेव जयते ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records quash same in respect of the impugned notification issued by 1st respondent under Sub Sec(5) of Sec.1 of the Employment State Insurance Act, 1948, Central Act XXXIV of 1948) hereinafter referred to as the ESI Act in GO Ms.No.237, Labour and Employment (K1) Department dated 26.11.2010, impugned attachment notice issued by the 3rd respondent in impugned order bearing No.TN/RECY/CP-51001004620001302/CCR77561 dated 4.1.2017 and letter bearing No.TN/RECY/CP-CP-51001004620001302/CCR77351 dated 23.12.2016 based on g.P.Ms.No.237, Labour and Employment (K1) Department dated 26.11.2010 as published in the Tamil Nadu Govt. Gazette No.51, dated 29.12.2010 in Part 2 Section 11 in so far as it relates to the petitioner school is concerned.

For Petitioner : Mr.C.T.Prabhakar
For R-1 : Mr.M.Elumalai, GA
For R-2 & 3 : Mr.G.Bharadwaj

ORDER

By consent, the writ petition is taken up for final disposal. Mr.M.Elumalai, learned Government Advocate accepts notice on behalf of the 1st respondent and Mr.G.Bharadwaj, learned counsel accepts notice on behalf of the respondents 2 and 3.

2 The petitioner would aver that the school is recognised by the Government of Tamil Nadu and the Notification issued by the 1st respondent [Impugned Order No.1], was challenged before this Court by the Tamil Nadu Matriculation Schools Association in WP.No.25883/2014 and so also in several other writ petitions and all the writ petitions along with writ appeals were disposed of by a common order dated 16.06.2015, in and by which, this Court had held that since the questions of law have been referred to a Larger Bench of the Hon'ble Supreme Court of India, i.e., whether the Employees State Insurance Act will apply to the Educational Institutions, thought fit to maintain interim orders till the disposal of the said Reference by the Hon'ble Supreme Court of India and in the light of the same, prays for similar orders.

3 The learned counsel for the petitioner has invited the attention of this Court to the order dated 16.12.2016 made in WP.No.42423/2016 and would submit that in similar facts and circumstances, this Court, in the light of the orders passed by the Hon'ble First Bench of this Court, in WA.No.918/2013, had disposed of the said writ petition and prays for appropriate orders.

4 Heard the submissions of Mr.M.Elumalai, learned Government Advocate appearing for the 1st respondent and Mr.C.Bharadwaj, learned counsel appearing for the respondents 2 and 3, who would submit that subsequently, several Special Leave Petitions have been dismissed and therefore, pendency of the matter before the Apex Court by way of Reference is nothing to do with the present writ petition.

5 The Court heard the rival submissions and also perused the materials placed before it.

6 It is relevant to extract paragraph 2 of the common judgment dated 16.06.2015 made in WA.No.918 of 2013 etc., batch:-

"2.In view of the aforesaid position, the writ appeals and the writ petitions are disposed of by agreement that the interim orders would continue till the disposal of the matter by the Honourable Supreme Court and the parties would naturally remain bound by the legal position enunciated by the Honourable Supreme Court on such decision being rendered. No costs. Consequently, connected miscellaneous petitions are closed."

7 In the considered opinion of the Court, the issue involved in this writ petition, is identical/similar to that of the case dealt by the Hon'ble First Bench of this Court in WA.No.918/2013 etc., batch.

8 In the light of the same, the interim orders shall continue till the disposal of the matter by the Hon'ble Supreme Court of India and subject to the result of the same, other process will follow. If the respondents 2 and 3 are aggrieved, in the light of the subsequent dismissal of the Special Leave Petitions, they are always at liberty to work out their remedy in accordance with law.

9 The writ petition stands disposed of with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The State of Tamil Nadu rep.by its
Principal Secretary, Labour and Employment Department,
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Chennai 600 009.
- 2 Employees' State Insurance Corporation,
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O/o.REcovery Office,
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"Panchdeep" Sherling Road,
Nungambakkam,
Chennai 600 034.

+2ccs to Mr.C.T. Prabhakar, Advocate, S.R.No. 11833

+1cc to Mr.G. Bharadwaj, Advocate, S.R.No.11670

+1cc to the Government Pleader, S.R.No.12446

SAI (CO)

EU 28.02.2017

W.P.No.4494/2017

सत्यमेव जयते

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