

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.3846 of 2017

Assisi Matriculation School
represented by its Correspondent
No.2/31, Anandam Nagar, Ramapuram
Chennai 600 089 .. Petitioner
-vs-

1. The Government of Tamil Nadu
rep.by its Principal Secretary
Labour and Employment Department
Fort St.George, Chennai 600 009
2. E.S.I.Regional Corporation (Tamil Nadu)
represented by its Regional Director
143, Sterling Road
Chennai 600 034
3. Deputy Director
E.S.I.Corporation
143, Sterling Road
Chennai 600 034 ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records pertaining to the impugned G.O.Ms.No.237, Labour and Employment (K1) dated 26.11.2010 passed by the first respondent and the consequential proceedings pertaining to the impugned Notice dated 03.01.2017 in TN/INS VIII/51-00-102763-000-1302/860/16-18 Adhoc, on the file of the third respondent and quash the same in respect of the petitioner school.

For Petitioner :: Dr.Fr.A.Xavier Arul Raj
Senior Counsel for Ms.A.Arul Mary

For Respondents :: Mr.M.Elumalai
Government Advocate for R1
Mr.G.Bharadwaj for R2 & 3

ORDER

Assisi Matriculation School represented by its Secretary, Ramapuram, Chennai has brought this writ petition challenging the impugned G.O.Ms.No.237, Labour and Employment (K1) dated 26.11.2010 issued by the Principal Secretary to Government, Labour and Employment Department, the first respondent herein and the consequential proceedings pertaining to the impugned Notice dated 03.01.2017 in TN/INS VIII/51-00-102763-000-1302/860/16-18 Adhoc, issued by the Deputy Director, E.S.I. Corporation, Chennai, the third respondent herein, to quash the same.

2. Learned senior counsel for the petitioner submitted that the petitioner school is an un-aided educational institution and therefore the said educational institution is not free to charge its own fee, since the same is fixed by the Fee Fixation Committee appointed as per the directions of the Hon'ble Supreme Court in Islamic Academy of Education reported in 2003 (6) SCC 697 and P.A.Inamdar reported in 2005 (6) SCC 537. He also further submitted that since the educational institutions cannot charge over and above the fee fixed by the authorities, it will be impossible for the un-aided educational institutions to take the additional burden imposed by the impugned notification for payment of ESI Contribution. While so, the G.O.Ms.No.237, Labour and Employment (K1) dated 26.11.2010 insisting upon the un-aided educational institution to make the ESI contribution is arbitrary.

3. Heard the learned Government Advocate for the first respondent and the learned counsel for the respondents 2 & 3.

4. It is not in dispute that when similar writ petitions were filed with regard to the extension of insurance scheme for the private educational institutions, the said writ petitions and writ appeals were clubbed together and decided in Writ Appeal No.918 of 2013 etc. batch, wherein the Hon'ble Division Bench of this Court by common order dated 16.06.2015, had disposed of the same on the following terms:-

"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."

5. Since the issue involved in this writ petition is identical to that of the case dealt with by the Hon'ble First Bench of this Court and I am bound by the above order passed by the Hon'ble First Bench, this writ petition is disposed of on the basis of paragraph-2 of the above order dated 16.06.2015 passed in Writ Appeal No.918 of 2013 etc., batch. Consequently, W.M.P.Nos.3913 & 3914 of 2017 are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

1. The Principal Secretary to Government
Labour and Employment Department
Fort St.George
Chennai 600 009
2. The Regional Director
E.S.I.Regional Corporation (Tamil Nadu)
143, Sterling Road
Chennai 600 034
3. The Deputy Director
E.S.I.Corporation
143, Sterling Road
Chennai 600 034

+2cc to Mr.Arul Mary, Advocate, S.R.No.10128

+1cc to the Government Pleader, S.R.No.10307

KJI(CO)
RS(08/03/2017)

W.P.No.3846 of 2017