

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.1618 of 2017
and WMP.No.1579 of 2017

Vellalar College for Women (Autonomous)
Rep. by its Secretary and Correspondent,
Perundurai Road,
Thindal,
Erode - 638 012.

... Petitioner

vs.

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

2. Employees' State Insurance Corporation
(Sub Regional Office)
Rep. by its Deputy Director,
No.1897, Trichy Road,
Panchdeep Bhavan,
Ramanathapuram,
Coimbatore - 641 045.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari, to quash the order of the second respondent herein No.56001107410001303 / 11152016418, dated 15.11.2016 under Section 45A of the Employees' State Insurance Act, 1948.

For petitioner : Mr.V.P.Sengottuvel

For respondents: Mr.M.Elumalai, Govt. Advocate for R1
Mr.P.Chandrasekar for R2

ORDER

Vellalar College for Women (Autonomous) rep, by its Secretary and Correspondent has brought this petition challenging the order of the second respondent in No.56001107410001303 / 11152016418, dated 15.11.2016 under Section 45A of the Employees' State Insurance Act, 1948.

2. Learned counsel for the petitioner would submit that the petitioner school is an un-aided Educational Institution, 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 would further submit that since the Educational Institutions cannot charge over and above the fee fixed by the authorities, it will be impossible for the partly Aided Educational Institution 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 Minority Educational Institution to make contribution is arbitrary. However, this issue is subjudice before the Apex Court. Hence, this writ petition deserves to be allowed.

3. Learned counsel for ESI/second respondent would submit that when a batch of Special Leave Petitions were filed before the Hon'ble Apex Court by the Educational Institutions against the order of the Kerala High Court dated 03.07.2009 in W.P. No.20279 of 2008, taking a stand that they are also equally exempted from the said G.O., the Hon'ble Apex Court, repelling the said contention, dismissed the same. He would further submit that if any issue is pending before the Larger Bench of the Hon'ble Apex Court, the Court would not have dismissed any subsequent Special Leave Petitions, therefore dismissal of SLP shows that there is no issue pending before the Larger Bench, hence, this writ petition also is liable to be dismissed.

4. Heard the parties.

5. When similar writ petitions were filed with regard to the extension of Insurance Scheme for Private Educational Institutions, the said writ petitions and writ appeals were clubbed together and finally disposed off the Writ Appeal No.918 of 2013 etc. batch, wherein the Hon'ble Division Bench of this Court by common judgment dated 16.06.2015, passed order in 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."

6. 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, this writ petition deserves to be disposed of in the same line.

7. Therefore, as I am bound by the above order passed by the Hon'ble First Bench, this writ petition is disposed of on the basis of para 2 of the above order dated 16.06.2015 passed in Writ Appeal No.918 of 2013 etc. batch. No costs. Consequently, connected W.M.Ps are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

tsvn

To

1. The Principal Secretary to Government
State of Tamil Nadu
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.
2. The Deputy Director
Employees' State Insurance Corporation
(Sub Regional Office)
No.1897, Trichy Road,
Panchdeep Bhavan,
Ramanathapuram,
Coimbatore - 641 045.

+1cc to Government Pleader sr.4917

+1cc to M/s.V.P.Singottavel, Advocate sr.4213

W.P.No.1618 of 2017

rs1(co)
ss(17/03/2017)

सत्यमेव जयते

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