

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.1977 of 2017

St.Joseph's Matriculation School
represented by its Principal
4-562, Sipcot Housing Colony
Dharga, Hosur 635 126Petitioner

-vs-

1. The Government of Tamil Nadu
represented 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. - Regional Office (Salem)
39/57, Theerthamalai Vaniga Valagam
Three Roads
Salem 636 009Respondents

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 Notice dated 23.12.2016 in
63000955490001302/INS/SRO/SLM/C18 (Adhoc)/529 /16 on the file of
the third respondent and quash the same in respect of the
petitioner school.

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

For Respondents : Mr.M.Elumalai
Government Advocate for R1
Mr.P.Chandrasekar for R2 & 3

ORDER

St.Joseph's Matriculation School represented by its Principal, Dharga, Hosur has brought this writ petition challenging the impugned notice dated 23.12.2016 bearing No.63000955490001302/INS/SRO/SLM/C18 (Adhoc)/529/16 issued by the Deputy Director, E.S.I.Regional Office, Salem, the third respondent herein and quash the same in respect of the petitioner school.

2. Learned senior counsel for the petitioner would submit 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 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 un-aided educational institution to take the additional burden imposed by the impugned notice for payment of the ESI Contributions.

3. Learned counsel for ESI/second and third respondents 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.

4. 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 decided in Writ Appeal No.918 of 2013 etc. batch, wherein the Hon'ble Division Bench of this Court by common judgment 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, this writ petition deserves to be disposed of in the same line.

6. If the second and third respondents take any such decision, it is for them to move appropriate Review Application before the First Bench. Leaving that option, they cannot take a stand that the writ petition is not maintainable in view of the dismissal on 03.07.2009. 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. Consequently, W.M.P.Nos.1961 & 1962 of 2017 are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

ss

Sub Assistant Registrar

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. - Regional Office (Salem)
39/57, Theerthamalai Vaniga Valagam
Three Roads
Salem 636 009

+2cc to Mr.Arul Mary, Advocate, S.R.No.5568
+1cc to the Government Pleader, S.R.No.5393

RK(CO)
RS(27/02/2017)

W.P.No.1977 of 2017