

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2017

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.40997 of 2016
and WMP.Nos.35003 and 35004 of 2016

St. Leo's Nursery and Primary School
Rep. by its Correspondent,
Big Bazaar Street,
Coimbatore - 641 001. 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. E.S.I - Sub Regional Office (Tamil Nadu)
Rep. by its Deputy Director,
1897, Trichy Road,
Panchadeep Complex,
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, calling for the records pertaining to the impugned G.O.(Ms).No.237, Labour and Employment (K1), dated 26.11.2010 issued by the first respondent and the consequential proceedings dated 02.06.2011 for ESI coverage in Code No.56001109820001301 and the Demand Notice, dated 18/21.10.2016 in No.56001109820001301/INS.IV on the file of the third respondent and quash the same in respect of the petitioner school.

For petitioner : Ms.A.Arul Mary

For respondents :Mr.M.Elumalai, Govt. Advocate for R1
Mrs.S.Jayakumari for R2 and R3

ORDER

St. Leos Nursery and Primary School rep, by its Correspondent has brought this petition challenging the impugned G.O.(Ms).No.237, Labour and Employment (K1), dated 26.11.2010 issued by the first respondent and the consequential proceedings

dated 02.06.2011 for ESI coverage in Code No.56001109820001301 and the Demand Notice, dated 18/21.10.2016 in No.56001109820001301 / INS.IV on the file of the third respondent and quash the same in respect of the petitioner school.

2. Learned 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. She 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 ESI contribution is arbitrary.

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. She 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 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, 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 respondent takes any such decision, it is for him to move appropriate Review Application before the First Bench. Leaving that option, he 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. No costs. Consequently, connected W.M.Ps are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

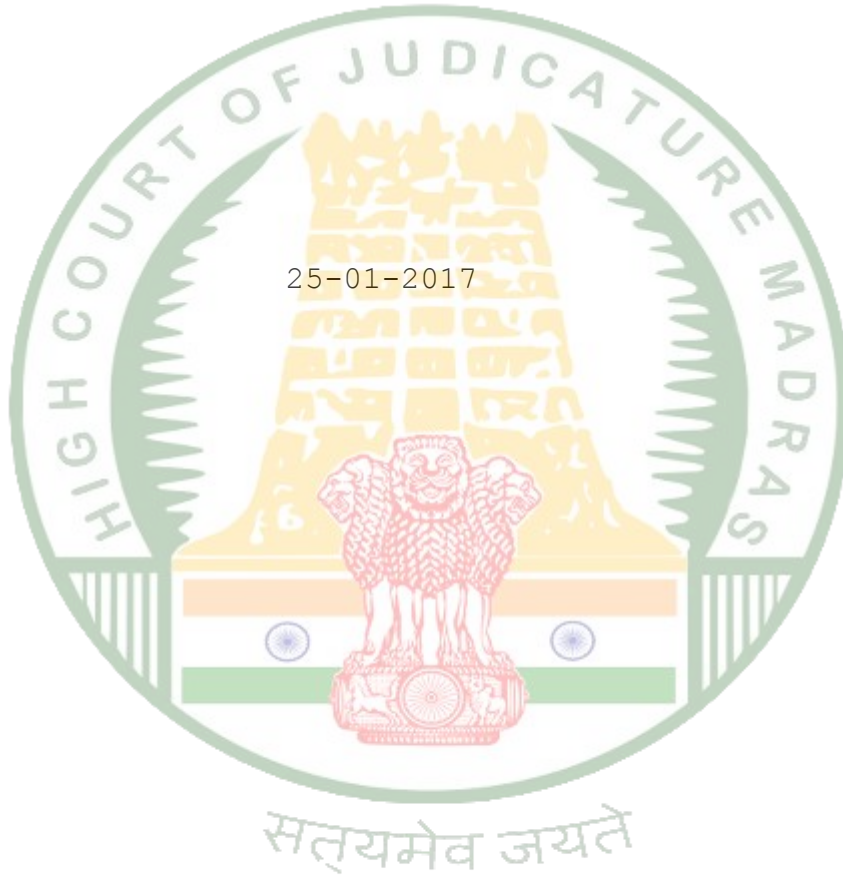
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+1cc to M/S. A. Arul Mary, Advocate (SR.NO. 4689)

+1cc to M/S. S. Jayakumari, Advocate (SR.NO.4786)

+1cc to Govt. Pleader, High Court, Madras-104 (SR.NO. 5309)

+2ccs to M/S. A. Arul Mary, Advocate (SR.NO. 4689)
(dt. 6/03/2017)



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