

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.2041 of 2007

ORDER:

This writ petition is filed to declare the action of respondent No.2 in raising demand against the petitioner vide notice dated 18.01.2007 towards ESI Arrears without approaching the ESI court, Hyderabad for withdrawal of the amount of Rs.5,97,800/- lying to the credit of E.I. Case Nos.143 of 2000 and 2 of 2001, as illegal and arbitrary and for a consequential direction to the respondents not to recover the amount in pursuance of the notice dated 18.01.2007 of the 2nd respondent.

2. Brief facts of the case, according to the petitioner, are that the ESI Corporation has raised a demand dated 28.07.2000 against the petitioner for payment of ESI contributions on the production bonus, HRA, education allowance and night shift allowances, amounting to Rs.23,34,325/- for the period from November, 1996 to March, 1998. Another notice dated 10.11.2000 was also issued towards ESI contributions amounting to Rs.3,21,672/- in respect of the same allowances for the months of April and May, 1998. The petitioner questioned these demands by filing petitions under Section 75 of the E.S.I. Act (for short 'the Act') before the Employees Insurance Court, Hyderabad in E.I.Nos.143/ 2000 and 2 of 2001. Pending the cases, the ESI court directed the petitioner to make deposit of Rs.7,11,000/- and Rs.96,500/- in those cases, as a condition precedent under Section 75(2-B) of the Act. The petitioner, accordingly, made deposit of those amounts vide challans dated 18.11.2000 and 26.12.2000. Thereafter, adjudication took place and judgment was delivered on 13.02.2002 by the ESI Court. In so far as the contribution on production bonus is concerned, the ESI Court held that the production bonus does not form

part of wages as defined under Section 2(22) of the Act and set aside the demand of the ESI Corporation. With regard to ESI contribution on other items like, HRA, educational allowances and night shift allowances are concerned, the contention of the petitioner was rejected and the ESI Corporation was directed to raise a fresh demand for the contributions towards those items. Against the said judgment, the ESI Corporation filed Appeals under Section 82 of the Act before this court in CMA Nos.2069 and 2106 of 2003, questioning the decision of the ESI Court with regard to the contributions on the production bonus paid by the petitioner to its workmen and the said appeals are pending. The petitioner addressed a letter dated 25.11.2002 to the 2nd respondent stating that the amounts lying in the ESI Court of Rs.8,07,500/- is in excess of the demand towards the contributions on the HRA, educational allowance and night shift allowances, amounting to Rs.5,97,802/- and the excess amount of Rs.2,09,708/- has to be refunded to the petitioner, after withdrawing the amount lying in the ESI court. In respect of another demand of the ESI Corporation dated 29.12.1998, the petitioner also filed a case before the ESI Court in E.I. Case No.17 of 1999 questioning the demanded amount of Rs.12,41,000/- pertaining to the months of November, 1996 to March, 1998. In that case also, the petitioner was directed to deposit Rs.3,16,375/- as a pre-condition. Since the petitioner had already paid that amount directly to the ESI Corporation, the ESI Court gave credit to the same by order dated 06.04.1999. Even in this case, the ESI court gave relief to the petitioner in respect of the production bonus and rejected its case on the other items vide judgment dated 10.01.2001. Against the said judgment, the respondents filed appeal in CMA No.3135 of 2001 before this court and the same is also pending. Suddenly, the 2nd respondent issued a notice

dated 03.01.2007 directing the petitioner to pay an amount of Rs.5,97,800/- . The petitioner replied on 10.01.2007 requesting the 2nd respondent to withdraw the demand amount of Rs.5,97,800/- from out of the amount of Rs.8,07,510/- lying in the ESI Court. The 2nd respondent replied on 18.01.2007 stating that he is not concerned with the amounts lying in the ESI Court. Hence, the writ petition.

3. This writ petition came up for admission on 08.02.2007 and an interim stay was also granted on the same day.

4. The 2nd respondent filed counter-affidavit, *inter-alia* contending that the petitioner without availing the alternative remedy under Section 75 of the Act before the ESI Court, Hyderabad, filed the present writ petition, which is not maintainable. It is further stated that the amount was deposited by the petitioner in ESI Court as a pre-condition, as prescribed under Section 75(2) of the Act and the petitioner is at liberty to withdraw the same after paying the dues to the Corporation. The appeals filed by the respondents in CMA Nos.2069 and 2106 of 2003 were dismissed by this court on 19.10.2007.

5. Heard Mr. Vedula Srinivas, learned counsel for the petitioner and Sri B.G. Ravindra Reddy, learned standing counsel for the respondents.

6. When the respondents raised a demand dated 28.07.2000 against the petitioner for payment of ESI Contributions on the production bonus, HRA, education allowance and night shift allowances amounting to Rs.23,34,325/- for the period from November, 1996 to March, 1998 and another notice dated 10.11.2000 in respect of the same allowances amounting to Rs.3,21,672/- for the months of April and May 1998, the petitioner approached the ESI Court vide E.I.Nos.143 of 2000 and 2 of 2001. During the pendency of the said cases, as per the

directions of the ESI court, the petitioner has deposited a sum of Rs.7,11,000/- and Rs.96,500/-, respectively, as a condition precedent under Section 75(2B) of the Act to the credit of the above cases. The ESI Court vide judgment dated 13.02.2002 held that the production bonus does not form part of wages and set aside the demand of the respondents. With regard to ESI contributions, the ESI court rejected the plea of the petitioner and directed the respondents to raise a fresh demand for the contributions towards those items. Aggrieved by the said judgment, the respondents filed CMA Nos.2069 and 2106 of 2003 before this court. The said appeals were dismissed by this court on 19.10.2007 confirming the judgment of the ESI Court. The said judgment attained finality. Hence, the petitioner is liable to pay a sum of Rs.5,97,802/- towards HRA, education allowance, night shift allowances etc. to the respondents.

7. The petitioner has deposited a sum of Rs.8,07,500/-, which is in excess of demand, before the ESI Court, as a condition precedent. The demand raised by respondents is only Rs.5,97,802/-. In the facts and circumstances of the case, the petitioner is permitted to withdraw the amount deposited before the ESI Court and directed to pay a sum of Rs.5,97,802/- which is due to the 2nd respondent Corporation. However, the respondents are at liberty to raise a demand, if any amount is due from the petitioner, in accordance with law.

8. The writ petition is, accordingly, disposed of. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 04.12.2017
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