

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05-07-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9333 of 2014

And

M.P.No.1 of 2014

B.Gnanasundari

.. Petitioner

Versus

The Regional Office,
Employees State Insurance Corporation,
ESI Corporation Panchdeep Bhavan,
No.14, Sterling Road,
Chennai.

.. Respondent

PRAYER:

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to consider the petitioner representation dated 30.6.2012 in the light of the G.O.Ms.No.45, dated 27.3.2012, Employment State Insurance Scheme for new sectors like petitioner Karthic Hospital as per the final notification under Section 1(5) of Employees State Insurance Act, 1948.

For Petitioner : Mr.C.Kanagaraj

For Respondent : Mr.T.N.C.Koushik

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondent to consider the representation submitted by the writ petitioner on 30.6.2012 in the light of G.O.Ms.No.45 dated 27.3.2012, Employees' State Insurance Scheme for new sectors like petitioner Karthic Hospital as per the final notification under Section 1(5) of Employees' State Insurance Act, 1948.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the calculation made by the respondent in respect of the employees strength was erroneous. In fact, the writ petitioner has not employed 20 persons in their establishment. Even as per the statement furnished by the Inspection Officer in a Visit Note only in the month of December 2011, the strength of employees in the Attendance Register were shown as 20. Therefore, the strength of employees taken into account by the respondent is based on wrong facts.

3. The learned counsel, appearing on behalf of the respondent, disputed the statement by stating that the respondent conducted an inspection under the provisions of the Act and found that 20 employees were employed in the writ petitioner-establishment. In order to escape from the clutches of the provisions of the Act, the writ petitioner has wrongly stated in the affidavit that they have not employed 20 persons in their establishment.

4. When such disputed question of facts are raised, the same cannot be adjudicated by taking evidence by a Writ Court under Article 226 of the Constitution of India. This apart, there is a provision for appeal under the Act, more specifically, under Section 75 of the Act, it is left open to the writ petitioner to approach the Employees' State Insurance Court (ESI Court) under the provisions of the Act, for the purpose of establishing their case. It is equally left open to the respondent to defend their case before the Court, if any, filed by the writ petitioner.

5. Thus, it is for the writ petitioner to initiate appropriate steps for the purpose of redressing their grievances. In view of the disputed facts and in view of the fact, there is an appeal provision under the Act, the present writ petition cannot be adjudicated on merits.

6. In this view of the matter, no further adjudication is required on the grounds raised in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

+lcc to Mr.T.N.C.Koushik, Advocate, S.R.No.43829
+lcc to M/S.C.Kanagaraj, Advocate, S.R.No.43543

WP 9333 of 2014

SSV(CO)
CS/17/07/18



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