

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31302 of 2017

M/s. Amarambedu Munuswamy  
Mudaliar Matriculation School,  
Rep. by its Correspondent and Secretary Mr.P.Sreeramulu,  
No.375, Mint Street, Sowcarpet,  
Chennai - 600 079. ... Petitioner

Vs.

1.The Employees State Insurance  
Corporation, Rep by its  
Deputy Director  
"Panchdeep Bhavan"  
No.143, Sterling Road, Nungambakkam,  
Chennai - 600 034.

2. The Recovery Officer,  
The Employees State Insurance  
Corporation, "Panchdeep Bhavan"  
No.143, Sterling Road, Nungambakkam,  
Chennai - 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Mandamus,  
directing the Principal Labour Court Judge at Chennai to take  
the petition in ESIOP S.R.No.3518 of 2017 on the file and issue  
notice to the respondents and deal the case in accordance with  
law.

For Petitioner : Mr.N.Baaskaran  
For Respondents : Mr.S.P.Srinivasan  
for R1 and R2.

ORDER

The relief sought for in this writ petition is to direct the  
Principal Labour Court Judge at Chennai to take the petition in  
ESIOP S.R.No.3518 of 2017 on the file and issue notice to the  
respondents and adjudicate the case in accordance with law.

2. The learned counsel appearing on behalf of the writ petitioner states that the order of recovery issued by the competent authorities under the provisions of Employees State Insurance Act, 1948 was initially challenged before this Court in W.P.No.14008 of 2017 and this Court passed an order on 13.06.2017 granting liberty to the writ petitioner to challenge the recovery certificate within a period of four(4) weeks from the date of receipt of copy of this order before the forum concerned and the forum concerned shall not reject it on the ground of limitation.

3. Pursuant to the orders of this Court, the writ petitioner had filed a petition before the Principal Labour Court, Chennai on 27.07.2017. The learned counsel for the writ petitioner states that the said petition filed was returned on 15.09.2017 stating that the petition is not maintainable because of the orders passed by the Hon'ble High Court and Hon'ble Supreme Court. Further, it is contended that the ESI court cannot entertain an appeal under the provisions of the Act against the order of return.

4. This Court is of the opinion that Section 75(1)(g) of the Act provides the matters to be entertained by the ESI Court, which is extracted below:

'75.1.(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.'

5. Against the recovery, the aggrieved person has to prefer an appeal before the ESI Court under Section 75(1)(g) of the Act. This being the provision of the law, the ESI Court ought not to have returned the petition filed by the writ petitioner. In fact, the petition is to be numbered if the same is otherwise in accordance with the procedures and the issues are to be adjudicated on merits and in the manner known to law.

6. This Court is of an opinion that this Court passed an order granting liberty to the writ petitioner to approach the

ESI Court under section 75 of the Act. There is no reason for the ESI Court to return the petition by stating that the same is not maintainable.

7. Thus, the Principal Labour Court, Chennai is directed to entertain the petition filed by the writ petitioner in ESI O.P.Sr.No.3518 of 2017 and number the same, unless otherwise the papers are in order and adjudicate the matter in the manner known to law, on merits and in accordance with law.

8. Accordingly, the impugned return stands quashed. The writ petition stands allowed. There is no order as to costs.

Sd/-  
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

msv

To

1.The Employees State Insurance Corporation, Rep by its Deputy Director "Panchdeep Bhavan" No.143, Sterling Road, Nungambakkam, Chennai - 600 034.

2. The Recovery Officer, The Employees State Insurance Corporation, "Panchdeep Bhavan" No.143, Sterling Road, Nungambakkam, Chennai - 600 034.

3.The Presiding Office, Labour Court, Chennai.

+1cc to Mr.N.Baskaran, Advocate SR.No.37858  
+1cc to Mr.S.P.Srinivasan, Advocate SR.No.37738

W.P.No.31302 of 2017

SPD(CO)  
GN(02/07/2018)