

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-04-2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32774 of 2017

And

W.M.P.Nos.36106 and 36107 of 2017

The Correspondent,
Madras Christian College Higher Secondary School,
No.72, Harrington Road,
Chetpet,
Chennai-600 031. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Labour and Employment Department,
Fort St. George,
Chennai-600 009.
- 2.The Employees State Insurance Corporation,
Represented by its Additional Commissioner and
Regional Director,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.
- 3.The Employees State Insurance Corporation,
(Regional Office) (Tamil Nadu),
Represented by its Deputy Director,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.
- 4.The Additional Commissioner and Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034. Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order issued by the first respondent State Government in G.O.(Ms.) No.237, Labour and

Employment (K1) dated 26.11.2010 and the consequential order issued by the fourth respondent vide Ref.No.TN/Ins-VIII/51-00-111598-000-1302 dated 9.11.2017 and quash the same.

For Petitioner : Mr.P.God Swaminath for
M/s.Isaac Chambers

For Respondent-1 : Mr.A.Raghu,
Government Advocate.

For Respondents-2to4 : Mr.S.P.Sriniwasan

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O R D E R

The relief sought for in this writ petition is to call for the records pursuant to the order passed by the first respondent in G.O.Ms.No.237, Labour and Employment Department, dated 26.11.2010 and the consequential order issued by the fourth respondent in proceedings dated 9.11.2017 and quash the same.

2. The writ petitioner is the Correspondent, Madras Christian College Higher Secondary School, seeking exemption from the application of the Employees' State Insurance Act, 1948.

3. Against the order of the Government issued in G.O.Ms.No.237, Labour and Employment Department, dated 26.11.2010, orders were passed by the High Courts and the matter went up to the Hon'ble Supreme Court of India and a final judgment was delivered in SLP (C) No.28285 of 2009 on 15.3.2016. Accordingly, the batch of cases filed before the Apex Court were dismissed by following the orders of the Hon'ble Supreme Court of India. This Court has also passed final orders on 20.3.2017 in WP No.48247 of 2016 as under:-

"The only challenge sought to be made in this writ petition is to the coverage of employee state insurance qua the private educational institution.

2. When the matter is taken up for hearing, learned counsel appearing for respondents 2 and 3 submits that the issue has been dealt with finally by the Apex Court in a batch of cases in SLP No.28285 of 2009 etc., and by order dated 15.03.2016, it has been held that private educational institutions are also bound to pay the employee state insurance contribution.

3. In such view of the matter, the writ petition stands dismissed. However, taking into consideration the pendency of the writ petition and the difficulties expressed by the petitioner, the arrears of ESI contribution as on today is ordered to be paid by the petitioner in 12 equal monthly instalments. It is made clear that the order would cover the past arrears till the month of March, 2017 and thus from the month of April, 2017, the petitioner is bound to pay the ESI contribution on regular basis. No costs. Consequently, connected miscellaneous petitions are closed."

4. The learned counsel for the writ petitioner has stated that the fourth respondent in their order dated 9.11.2017 has stated that no appeal/ representation will be entertained against the order dated 9.11.2017. However, this Court is of an opinion that such a statement is made only in respect of the representation/appeal, if any, preferred with the Additional Commissioner and Regional Director.

5. However, the respondents cannot prevent the writ petitioner from preferring an appeal under the provisions of the Act. Thus, in respect of damages alone, the writ petitioner is at liberty to prefer an appeal under the provisions of the Employees' State Insurance Act, 1948. However, in all other aspects, the Hon'ble Supreme Court dismissed the claim of the institutions. The learned counsel for the writ petitioner further states that the contributions are already disbursed by the writ petitioner to the competent authorities and they have rightly done so and they are liable to continue to pay the contributions in accordance with the provisions of the Employees' State Insurance Act and the Rules. Thus, no further adjudication is required in this writ petition.

6. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

svn

To

1.The Secretary,
State of Tamil Nadu,
Labour and Employment Department,
Fort St. George,
Chennai-600 009.

2.The Additional Commissioner and Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.

3.The Deputy Director,
Employees State Insurance Corporation,
(Regional Office) (Tamil Nadu),
No.143, Sterling Road,
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Chennai-600 034.

4.The Additional Commissioner and Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.

+1cc to Mr.S.P.Srinivasan, Advocate, S.R.No.25891

+1cc to M/s.Issac Chambers, Advocate, S.R.No.26630

W.P.No.32774 of 2017

PPA (CO)

RRK (28/04/2018)

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