

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.5 of 2018
and
C.M.P.Nos.97 and 98 of 2018

Shri Balaji Nursery & Primary School
rep.by its Correspondent,
D.Palaniappan,
S/o.Dhakshinamoorthi,
18, 19 Beeman Street,
Behind Old Town Bus Stand,
Kumbakonam-612 001. ... Appellant/Petitioner

-vs-

1. The State of Tamil Nadu,
rep.by its Principal Secretary to Government,
Labour and Employment Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The E.S.I.Regional Corporation,
rep.by its Regional Director,
143, Sterling Road,
Chennai-600 034.
3. The E.S.I.-Sub Regional Office,
rep.by its Deputy Director,
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem-636 009. .. Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.25752 of 2017 dated 09.10.2017.

W.P. No 25752/2017:

Petition filed under Article 226 of the constitution of India praying for the issue of 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 passed by the 1st respondent and the consequential proceedings of the 3rd respondent in Ref. No.63000932860001302 / INS /SRO / SLM / 139

/12 dated 27.10.2016 directed the petitioner to remit the contribution and to quash the same.

For Appellant :: Mr.S.Gunalan

For Respondents:: Mr.R.Prathap Kumar,
Additional Government Pleader

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

This writ appeal has been filed against the order passed by a learned single Judge of this Court in W.P.No.25752 of 2017 dated 09.10.2017, wherein the prayer made by the appellant herein to quash the Government Order passed in G.O.Ms.No.237, Labour and Employment (K1) Department, dated 26.11.2010 by the first respondent, directing the appellant to make the contributions in respect of their employees under the Employees State Insurance Act, 1948, was rejected, placing reliance upon a judgment of this Court in W.A.No.608 of 2017 dated 06.07.2017 (ESI Regional Corporation (Tamil Nadu) represented by its Regional Director, Chennai and two others v. Avila Convent Matriculation Higher Secondary School, Coimbatore and another).

2.The appellant approached this Court by filing W.P.No.25752 of 2017, challenging the Government Order passed in G.O.Ms.No.237, Labour and Employment (K1) Department, dated 26.11.2010 by the first respondent, directing the appellant to make the contributions in respect of their employees under the Employees State Insurance Act, 1948 ('ESI Act' in short). It is the case of the appellant that since the appellant is a minority educational institution run by the trustees, it is not amenable to the Employees State Insurance Act. The learned single Judge, relying upon a Division Bench judgment of this Court in W.A.No.608 of 2017 dated 06.07.2017 dismissed the writ petition on 09.10.2017 with a direction to pay the arrears of ESI contributions as on 30.09.2017 in 12 equal monthly instalments with a further direction to pay the ESI contributions on regular basis without fail, from the month of October 2017. The said order has been passed along with two other writ petitions with similar prayer. Challenging the said order passed in respect of W.P.No.25752 of 2017, the appellant has come up with this appeal.

3.The learned counsel for the appellant has submitted that the learned single Judge has failed to note Section 1(5) of the ESI Act, 1948, which does not cover educational institutions. The term 'establishment' which finds a place in Section 1(5) is not defined in the Act. Further, referring to Section 2(24) of the ESI Act, and contending that the impugned notification is contrary to the decision of the Hon'ble Supreme Court in

T.M.A.Pai's case reported in (2002) 8 SCC 481, the learned counsel for the appellant prayed for allowing this writ petition.

4.Per contra, the learned Additional Government Pleader appearing for the respondents has submitted that the learned single Judge has dealt with the matter in proper perspective and passed the impugned order, relying upon a decision of the Division Bench of this Court in W.A.No.608 of 2017 dated 06.07.2017 and hence the same does not require any interference.

5.Heard the learned counsel on either side and perused the materials available on record.

6.When a similar issue arose before the Kerala High Court, the Kerala High Court, after considering the identical contentions made by the petitioners therein that the educational institutions are not falling within the ambit of the ESI Act, by order dated 03.07.2009 held that the educational institutions are also to be brought under the purview of the ESI Act. The said judgment was also affirmed by the Hon'ble Supreme Court by dismissing the S.L.P.Nos.28285 of 2009 etc., filed by the educational institutions, by order dated 15.03.2016. Relying upon the same, this Court disposed of the writ appeal in W.A.No.608 of 2017 on 06.07.2017 filed by the ESI Corporation, holding that the appeal is no more res integra. Since the issue is no more res integra, the learned single Judge has passed the impugned order in the present case, rightly rejecting the claim of the appellant herein.

7.In view of the above stated circumstances, the writ appeal stands dismissed. Consequently the connected miscellaneous petitions are closed. No costs.

s/d-

Assistant Registrar(CS VI)

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Sub-Assistant Registrar

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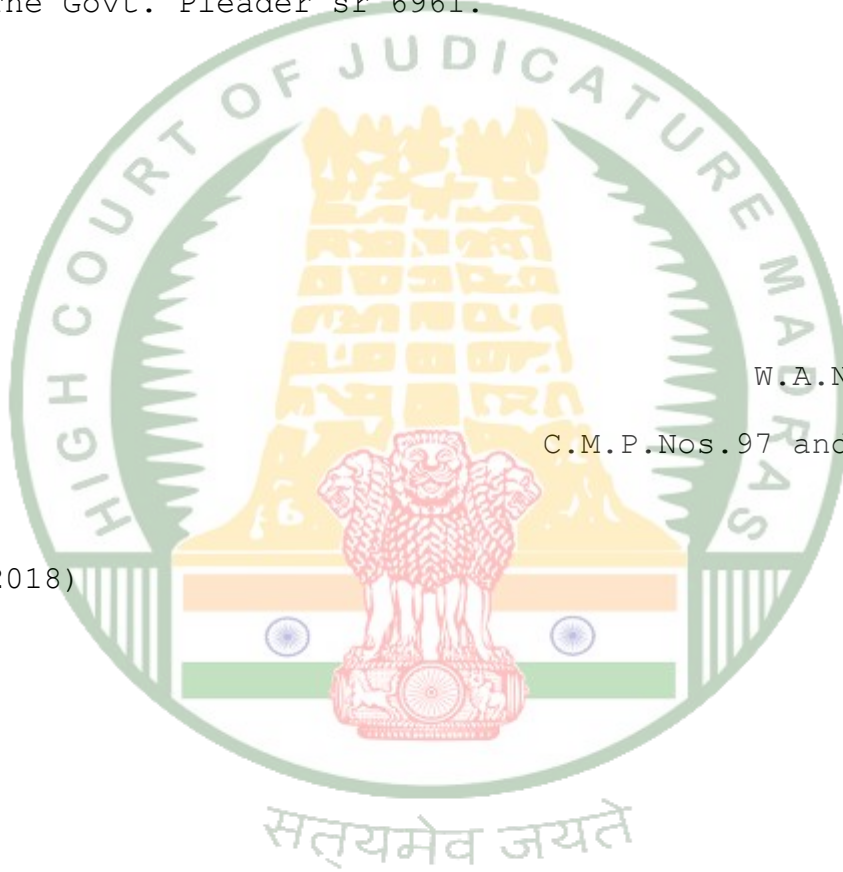
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+1 CC to Mr.S.Gunalan, Advocate sr 7172.

+1 cC to The Govt. Pleader sr 6961.



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EV(CO)
SP(17/02/2018)

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