

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 3468 OF 2019

AND

W.M.P. NOS. 3769 & 3770 OF 2019

Madha Arts & Science College
Erandamkattalai, Sadanandapuram
Thandalam Post, Chennai 600 122
rep. By its Principal, Dr. K.Sivakumar

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By its Prl. Secretary to Government
Labour & Employment Department
Secretariat, Fort St. George
Chennai 600 009.

2. The Regional Director
Regional Office (Tamil Nadu)
Employees State Insurance Corporation
Panchdeep Bhawan, No.143, Sterling Road
Chennai 600 034.

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

5. The Recovery Officer
Regional Office (Tamil Nadu)
Employees State Insurance Corporation
Panchdeep Bhawan, No.143, Sterling Road
Chennai 600 034.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the impugned order issued by the 3rd respondent in No.TN/Ins.VIII/51-00-109775-000-1303/C18 Adhoc dated 21.02.2018 and the subsequent impugned orders issued by the 4th respondent in Ref. No.51001097750001303/CP/287149 CCR-

82641 dated 10.12.2018 and in Ref.
No.51001097750001303/CP/290860 CCR-82949 dated 21.12.2018 and
quash the same.

For Petitioner : Mr. G.Sankaran

For Respondents: Mr. J.Ramesh, AGP for R-1
Mr.Bharadwaj for RR-2 to 4

ORDER

The challenge in the writ petition is to the order passed by the ESI Corporation u/s 45-A of the Employees State Insurance Act (for short 'ESI Act'), determining a sum of Rs.4,48,305/- as the statutory due towards arrears of contribution by the petitioner College. Subsequently, two consequential orders were passed on 10.12.2018 and 21.12.19 towards contribution for the period 2011-2015 and for the period from March, 2015 to December, 2016.

2. The principal ground of attack in the writ petition is that the ESI Act is not applicable to educational institutions and whether the educational institutions are governed by the provisions of the ESI Act is the subject matter of reference to a Larger Bench of the Hon'ble Supreme Court. Since decision is yet to be taken by the Larger Bench of the Hon'ble Supreme Court, a Division Bench of this Court has ordered status quo to be maintained, which means that by the interim order passed by the Division Bench, the parties are to be bound by the legal position to be enunciated by the Hon'ble Supreme Court on such decision being rendered. According to the petitioner, in view of the order passed by the Division Bench of this Court, the authorities under the ESI Act cannot pass orders demanding any contribution from the petitioner institution in pursuance of G.O. Ms. No.237 dated 26.11.10. According to the writ petitioner, the above interim order was passed by the Division Bench of this Court, when the above Government Order was put to challenge in a batch of writ petitions.

3. The issue whether educational institutions are covered by the ESI Act or not is no more res integra and atleast three Division Benches of this Court have held that the provisions of the ESI Act are applicable to educational institutions and the reference to the Larger Bench by the Hon'ble Supreme Court is in respect of a different issue and the interim order of the Division Bench of this Court, which is relied on by the petitioner, has mistakenly referred to the reference to the Larger Bench as if the present issue is the subject matter of reference.

4. This Court recently considered such challenge in a writ petition in W.P. No.3317/19 and by order dated 19.2.19, the challenge made on behalf of the petitioner therein was discountenanced and dismissed the writ petition. This Court, advertent to the submissions made on behalf of the ESI Corporation and also to various decisions passed by at least three Division Benches of this Court and the decision being affirmed by the Hon'ble Supreme Court, has held that the writ petition challenging the applicability of the provisions of the ESI Act to education institutions is without any merits.

5. The order passed by this Court in the aforesaid W.P. No.3317/19 by considering the objections, are extracted hereunder :-

"13. From the above orders passed by this Court, it is clear that this Court has consistently taken the view that the ESI Act is applicable to unaided schools and colleges and, therefore, the reliance placed by the learned counsel for the petitioner on the order passed by the Division Bench of this Court in W.A. No.918/11 vide its order dated 16.6.15 is legally unacceptable and it cannot be sustained at all. The mistake, which had crept in, in the order passed by the learned Division Bench, cannot be taken advantage of by the petitioner to seek the indulgence of this Court. When several writ petitions have been filed in regard to the same subject matter and this Court, while deciding the case, had negatived such claims and the same having been affirmed by the Hon'ble Supreme Court, it is no more open to this petitioner to challenge the action of the respondent authorities in enforcing the provisions of the ESI Act against the petitioner.

14. As rightly contended by the learned counsel for the respondents, when the issue is no more res integra as held by the Division Bench of this Court, it would not be right for a single Judge to reappreciate the matter once over. Since at least three Division Benches of this Court have taken a consistent view in negating the challenge of the private schools and colleges, like the petitioner herein, this Court cannot take a different view in the matter, and particularly as a single Bench, this Court is bound by the orders passed by the Division Benches as affirmed by the Hon'ble Supreme Court.

15. For the reasons aforesaid, this writ petition lacks merit and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs."

6. In view of the above position of law, this Court is of the view that the issue under challenge, made by the petitioner College, does not survive any longer and no more res integra, as the issue already stands settled. Therefore, this petition lacks merit and is liable to be dismissed.

7. For the reasons aforesaid, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Prl. Secretary to Government
Labour & Employment Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai 600 009.
2. The Regional Director
Regional Office (Tamil Nadu)
Employees State Insurance Corporation
Panchdeep Bhawan, No.143, Sterling Road
Chennai 600 034.
3. The Deputy Director
Regional Office (Tamil Nadu)
Employees State Insurance Corporation
Panchdeep Bhawan, No.143, Sterling Road
Chennai 600 034.
4. The Recovery Officer
Regional Office (Tamil Nadu)
Employees State Insurance Corporation
Panchdeep Bhawan, No.143, Sterling Road
Chennai 600 034.

+1cc to Mr.G.Sankaran, Advocate SR.No.28369

+1cc to Mr.G.Bharadwaj, Advocate SR.No.28340

+1cc to Government Pleader SR.No.28557

W.P. NO.3468 OF 2019

KK (CO)
GMY (03/05/2019)



WEB COPY