

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 3317 OF 2019

AND

W.M.P. NO. 3589 OF 2019

Rose Garden Matric
Higher Secondary School
rep. By its Correspondent
S.Mohammed Hassim
No.1/253, T.A.S. Nagar
Ooty Road, Mettupalayam 641 301
Coimbatore District. .. Petitioner

- Vs -

1. The Director
Employees State Insurance
Corporation, No.143, Sterling Road
Nungambakkam, Chennai 600 034.
2. The Social Security Officer
Employees State Insurance
Corporation, Sub Regional Office
No.1897, Trichy Road
Ramanathapuram, Coimbatore 641 045. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus forbearing the respondents from invoking the provisions of the Employees State Insurance Act, 1948, till the disposal of the question of law that whether the Employees State Insurance Act, 1948 apply to the Educational Institutions pending before the Larger Bench of the Hon'ble Supreme Court of India in Civil Appeal No.897 of 2002.

For Petitioner : Mr. G.Krishnakumar

For Respondents : Mr. G.Bharadwaj

ORDER

The issue that is raised in this writ petition is no more res integra in view of a series of decisions passed by the Division Benches as well as Single Judges of this Court, which had been affirmed by the Hon'ble Supreme Court of India.

2. According to the petitioner/school, the Government has passed G.O. Ms. No.237 dated 26.11.10 bringing the schools within the ambit of the Employees State Insurance Act. Challenge was originally laid by various consortium and association of schools, which included the petitioner.

3. According to the learned counsel for the petitioner, the issue whether the Employees State Insurance Act could be made applicable to the unaided schools was referred to a Larger Bench by the Hon'ble Supreme Court and in that view of the matter, a Division Bench of this Court, vide order dated 16.6.15 in W.A. No.918 of 2013 has passed an order as under :-

"2. In view of the aforesaid position, the writ appeals and the writ petitions are disposed of by agreement that the interim orders would continue till the disposal of the matter by the Honourable Supreme Court and the parties would naturally remain bound by the legal position enunciated by the Honourable Supreme Court on such decision being rendered. No costs. Consequently, connected miscellaneous petitions are closed."

4. The learned Division Bench of this Court referred to an order dated 5.5.2005 reported in State of U.P. - Vs - Jai Bir Singh (2005 (5) SCC 1). The learned Division Bench, in the above order, has stated that since the issue has been referred to a Larger Bench by the Hon'ble Supreme Court, the interim orders would continue till the disposal of the matter pending before the Larger Bench of the Hon'ble Supreme Court.

5. According to the learned counsel for the petitioner, the present writ petition has been filed for a direction restraining the respondents from invoking the provisions of the employees State Insurance Act in respect of contribution from the school on the ground that the Larger Bench of the Supreme Court has not rendered any decision and that they are protected in the light of the orders passed by the Division Bench of this Court in W.A. No.918 of 2013 dated 16.6.15.

6. Countering the said argument, learned counsel for the respondents submit that the learned Division Bench of this Court, in the aforementioned order, has mistakenly passed orders on the ground that the applicability of the Employees State Insurance Act (for short 'ESI Act') to unaided schools was the subject matter of reference before the Larger Bench of the Hon'ble Supreme Court, but the fact remains that the question that is referred to the Larger Bench by the Hon'ble Supreme Court is whether the Social

Forestry Department was an industry under the provisions of Section 2 (j) of the Industrial Disputes Act. Citing the above mistaken order of the Division Bench order, several schools have obtained interim orders and they were enjoying the interim orders without making any contribution under the provisions of the ESI Act.

7. Learned counsel for the respondents further submit that similar Government Order, which originally was the subject matter of litigation, has been upheld by the Kerala High Court and the matter had gone up to the Hon'ble Supreme Court and the Hon'ble Supreme Court has affirmed the order passed by the Kerala High Court vide order dated 15.3.16 in SLP No.28285/09. The Kerala High Court, vide order dated 3.7.09, in W.P. (C) No.5986 of 2008(K) & 20279 of 2008, had passed a detailed order upholding similar Government Order bringing the private schools within the ambit of the provisions of the ESI Act.

8. As far as this Court is concerned, learned counsel for the respondents submit that following the order passed by the Kerala High Court as affirmed by the Hon'ble Supreme Court, a Division Bench of this Court in W.P. No.22948/17 dismissed similar challenge by a private school vide its order dated 6.9.17. The Division Bench of this Court has followed the order of the Hon'ble Supreme Court and dismissed similar claim. The relevant portion of the order of the Division Bench, as found in paras-3 and 4 are extracted hereunder :-

"3. When the matter is taken up for hearing, the Learned Counsel appearing for Respondents 2 and 3 / E.S.I. Corporation brings it to the notice of this Court that the present issue has been dealt with by the Hon'ble Supreme Court in a Batch of cases in S.L.P.No.28285 of 2009 etc., by virtue of the Order dated 15.03.2016 in and by which, it was held that Private Educational Institutions were also bound to pay the Employees' State Insurance Contribution, under the Employees' State Insurance Act, 1948.

4. In such view of the matter, the Writ Petition stands dismissed. However, taking into consideration the difficulties expressed by the Petitioner / School, the arrears of E.S.I Contribution as on 31.08.2017 are ordered to be paid in 12 Equal Monthly Instalments. Also, this Court makes it abundantly clear that the order would encompass the past arrears till the Month of August, 2017 and from the Month of September, 2017, the Petitioner is directed

to pay ESI Contribution on regular basis without fail. Consequently connected Miscellaneous Petitions are closed. No costs."

9. Following the same, yet another Division Bench of this Court, vide order dated 26.10.17 in W.A. No.1308/17 has dismissed an appeal filed by a college holding that the private college has to pay the ESI contribution to the authority concerned. Para-7 of the order of the Division Bench is extracted hereunder for better clarity :-

"7. Having regard to the admitted fact that the petitioner College is a private educational institution, we do not find any reason to interfere with the order so passed by the learned Single Judge, as the issue involved herein is covered by the decision of the Hon'ble Supreme Court in a batch of cases in SLP(C) No.28285 of 2009 etc. dated 15.03.2016, wherein, it has been held that the private educational institutions are also bound to pay the Employee State Insurance contribution. Therefore, the petitioner College has to pay the ESI contribution to the authority concerned, in accordance with law."

10. The writ appeal orders were taken on further appeal by way of SLP Nos.1626/18 and 3474/18 before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed those special leave petitions vide order dated 9.2.2018.

11. Even recently, on 20.6.18, one another Division Bench of this Court has passed similar orders in W.A. No.420/18 and reference was made to referral order to the Larger Bench by the Hon'ble Supreme Court and the Division Bench held that the issue was no more res integra. The relevant portion of the order passed by the Division Bench, as found in paras-9 and 10, are extracted below for easy reference :-

"9. The judgment dated 3 July 2009 in W.P. (C) Nos.5986 of 2008 of the Kerala High Court was taken up before the Hon'ble Supreme Court in SLP (C) Nos. 28285 of 2009. The Hon'ble Supreme Court dismissed the Special Leave Petitions by order dated 15 March 2016.

10. The issue raised by the appellant is therefore no longer res integra in view of the decision of the Kerala High Court, which was subsequently upheld by the

Hon'ble Supreme Court. We are therefore of the view that there is absolutely no merit in the contention taken by the appellant."

12. Likewise, a learned single Judge of this Court dismissed the writ petition filed by private colleges and a private school in W.P. Nos.26031, 25744 and 25752 of 2011 vide order dated 9.10.17. Para-5 of the said order, passed by the learned single Judge, is quoted hereunder for reference :-

"5. Since the order passed by the Division Bench of the Kerala High Court holding that the educational institutions are also amenable to the ESI Act and they should also make their contributions has been affirmed by the Apex Court, this Court, bound by the order passed by the Division Bench dated 6.7.2017, is not inclined to entertain the present writ petitions."

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 atleast 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.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Director
Employees State Insurance
Corporation, No.143, Sterling Road
Nungambakkam, Chennai 600 034.
2. The Social Security Officer
Employees State Insurance
Corporation, Sub Regional Office
No.1897, Trichy Road
Ramanathapuram, Coimbatore 641 045.

+1cc to Mr.G.Bharadwaj , Advocate SR.No.15884

+1cc to Mr. G.Krishnakumar, Advocate SR.No. 15701

W.P. NO. 3317 OF 2019

A.SK(13/03/2019)

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