IN THE HIGH COURT OF JUDICATURE AT MADRAS

19.03.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.7477 of 2019
and
W.M.P.No.8137 of 2019

M/s.Little Rose Nursery and Primary
School,
rep.by its Correspondent
Mr.Dr.Satya Sarvodaya ... Petitioner

vs.

The Deputy Director Insurance VIII,
ESI Corporation,
Regional Office,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034 .... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records pertaining to the proceedings of the respondent herein under Ref:51001095350001301/CP/302274, CCR-83836, dated 25.02.2019 and to quash the same.

For Petitioner .. Mr.M.Madhu Prakash

For Respondent .. Mr.K.Prabakar

ORDER

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Challenging the order dated 25.02.2019, passed by the respondent directing the petitioner Management to pay a sum of Rs.3,67,273/- towards ESI contribution, under the provisions of the ESI Act, the present writ petition has been filed.

2.When the matter is taken up for hearing, the learned counsel for the respondent would submit that as against the order impugned, appeal is provided under Section 45-AA of the Employees' State Insurance Act, 1948 (hereinafter referred to as

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'ESI Act') and without exhausting the same, the petitioner has approached this Court directly.

3.This Court time and again has held that whenever effective appeal remedy is available under the relevant Statute, the same has to be exhausted before approaching this Court and the extraordinary jurisdiction of this Court cannot be invoked. When an effective mechanism is provided under the ESI Act, the same has to be availed of before the petitioner seeks intervention of this Court under the writ jurisdiction. Although the learned counsel for the petitioner would submit that the petitioner institution is not covered under the ESI Act, since the number of employees are less than what is prescribed under the ESI Act, this Court is of the view that such contention can very well be raised before the appellate authority and it is always open to the appellate authority to consider the objections raised on behalf of the petitioner. However, it is not certainly open to the petitioner to directly approach this Court without exhausting the appeal remedy available under the statute.

4.For the aforesaid reasons, this Court finds that the writ petition is not maintainable and therefore, the same is dismissed. However, liberty is given to the petitioner to approach the appellate authority under the provisions of the ESI Act, if they are so advised. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Deputy Director Insurance VIII,
ESI Corporation,
Regional Office,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.

+1cc to Mr.K.Prabakar, Advocate Sr.26697

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srg 27/04/2019

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