

C.M.P.NO.13219 OF 2018
in
C.M.A.SR. NO.29795 OF 2018

M.GOVINDARAJ, J.

The present appeal is preferred against the order passed by the Employees Insurance Court in E.I.O.P.NO. 229 of 2004, dated 25.08.2015.

2. According to the appellant, the Employee Insurance Court has no jurisdiction to remand the matter. However, the Employee Insurance Court has set aside the order dated 26.05.2004, under Section 45 (A) of the Employee's State Insurance Act, 1948 and remanded the matter by its order dated 28.05.2015 to the original authority with a direction to consider the documents produced by the petitioner and to determine the contribution based on the factual and legal aspects raised, after providing sufficient opportunity and dispose of the case within three months.

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3. As per the direction issued the respondent afforded an opportunity to the appellant herein. He also availed the opportunity and participated in the proceedings before the ESI Authorities. To be precise, he accepted the order

of remand and raised objections against the demand made by respondent on merits. Subsequently, he also challenged the order under Section 45-A of the Act on 05.02.2018 in Writ proceedings before this Court. Later he withdrew the Writ petition filed by him in W.P.No.4567 of 2018 with liberty to challenge the order dated 05.02.2018 before the appropriate forum.

4. However, the appellant has not challenged the same, on the other hand, chosen to challenge the order dated 28.05.2015 passed by the ESI Court in E.S.I.O.P.No.229 of 2004 on the ground that Employee Insurance Court has no provision in the statute to remand the matter. In this process, there is a delay of 894 days in filing this appeal. The present petition is to condone the above said delay.

5. I have considered the submissions made by the learned counsel for the appellant.

6. In the considered opinion of this Court, the appellant had readily acquiesced the order of remand by ESI Court and participated in the proceedings before the respondent. Before the ESI Court He wanted an opportunity to raise objections to the demand on the basis of documents produced by him and in all fairness an opportunity was granted by remanding

the matter. Having availed the opportunity, he cannot turn around and state that the Court has no power to remand the matter. Even this was done after challenging the subsequent order of the respondent dated 05.02.2018 by way of Writ proceedings, i.e. before a wrong forum.

7. Even in the Writ proceedings liberty was granted to challenge the order of respondent dated 05.02.2018, which was passed after conducting fresh enquiry. He was afforded personal hearings more than 5 times and all the documents were considered. In such circumstances it is but, fair and legal to challenge the order dated 05.02.2018 and not an obsolete order of remand dated 28.05.2015, invited, accepted and acted upon by him. The reason that he is now given a legal advice to challenge the same is not valid and sustainable to condone the delay.

8. This Court finds no merits consideration. Accordingly, this petition is not acceptable and is dismissed.

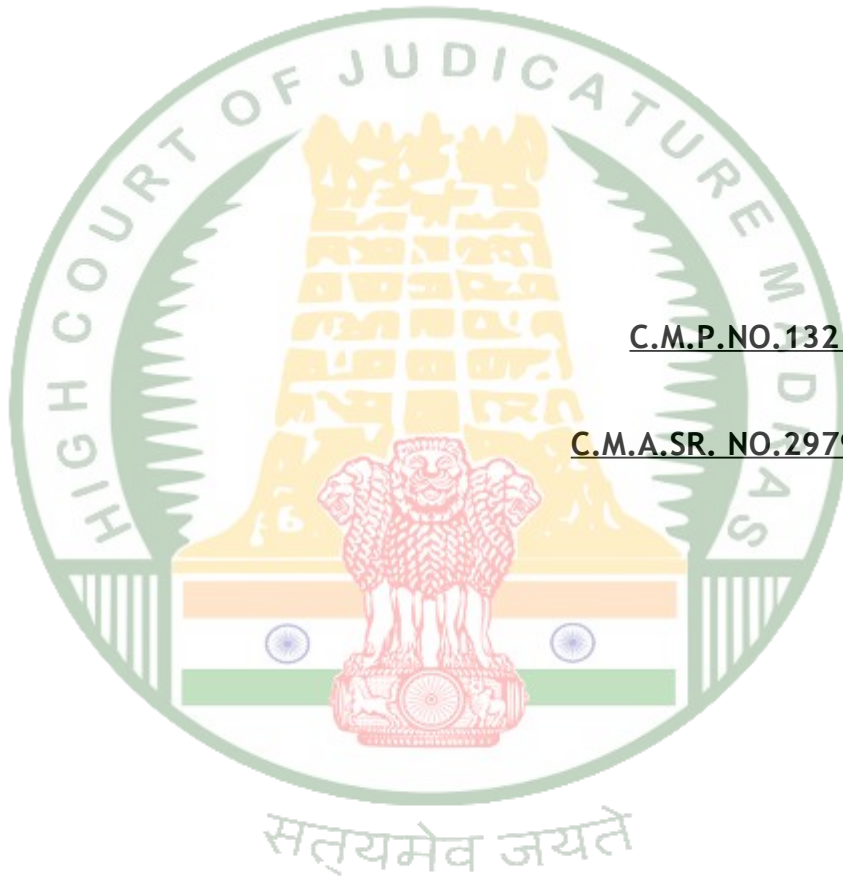
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