

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020
CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4692 of 2018
and
W.M.P. No. 5798 of 2018

M/s. Samuel Harris Matriculation Higher Secondary School
Rep. By its Correspondent
Mr. S.H. Justus
No.10-A, Cholambedu Road
Ambattur, Chennai - 53.

...Petitioner

-vs-

1. The Deputy Director
ESI Corporation
Regional Office
Sterling Road
Chennai.

2. R.Suresh

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for all the records pertaining to the passing of the order dated 09.11.2017 in proceeding no. TN/NS VIII/51-00-107672-000-1302C-18Adhoc on the file of the First Respondent and quash the same.

For Petitioner : Mr. N.Edwin Jeyakumar
For Respondents : Mr. A.E.Lakshminarayanan
For Mr. K.Prabakar (For R1)

ORDER
(through video conference)

Heard Mr. N.Edwin Jeyakumar, Learned Counsel for the Petitioner and Mr. A.E.Lakshminarayanan for Mr. K.Prabakar, Learned Counsel for the First Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has challenged the order no. TN/NS VIII/51-00-107672-000-1302C-18Adhoc dated 09.11.2017 passed by the First Respondent in this Writ Petition. It is evident on a perusal of the said order that it is a show cause notice for which the Petitioner had been required to submit his explanation during the enquiry that had to be fixed on 30.11.2017. The contention of the Petitioner in the Writ Petition is that by Memorandum of Understanding dated 27.10.2012 entered by him with the Second Respondent, the establishment, viz., Samuel Harris Matriculation Higher Secondary School, has been handed over to the Second Respondent, who would be now answerable for the contributions under the Employees' State Insurance Act, 1948 claimed by the First Respondent in the impugned order.

3. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Special Director -vs- Mohammed Ghulum Ghouse [(2004) 3 SCC 440], Secretary, Ministry of Defence -vs- Prabhash Chandra Miradha [(AIR 2012 SC 2250)] and Life Insurance Corporation of India -vs- A. Masilamani [(2013) 6 SCC 530] that a show cause notice cannot be challenged before completion of enquiry and the proceedings cannot be interfered with in the interregnum till it reaches its logical conclusion. There is nothing shown which precludes the Petitioner to agitate the contention raised in this Writ Petition, before the First Respondent by way of explanation to the show cause notice that has been issued.

4. In that view of the matter, the Petitioner shall submit his explanation with supporting documents and comply with the requirements sought in the show cause notice by 31.08.2020, if not done earlier, and the First Respondent shall afford full opportunity of hearing to all persons concerned including the Petitioner and shall duly consider the explanation of the Petitioner and pass reasoned orders on merits and in accordance with law and communicate the decision taken to them under written acknowledgment. It is made clear that no view has been expressed by this Court on the correctness or otherwise on the merits of the contentions raised by the Petitioner.

5. The Writ Petition is dismissed with the aforesaid observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya

To

The Deputy Director
ESI Corporation
Regional Office
Sterling Road
Chennai.

W.P. No. 4692 of 2018

RJI (CO)
KKV/07/08/2020



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