

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.6754 OF 2021

AND WMP NOS.7316 AND 7318 OF 2021

St. Patrick's High School
Rep. by its Correspondent
Gandhi Nagar, Adyar,
Chennai - 600 020.

... Petitioner

Versus

1.The Government of Tamil Nadu
Rep. by its Principal Secretary
Labour and Employment Department
Fort St. George, Chennai - 600 009.

2.E.S.I. - Regional Corporation (Tamil Nadu)
Rep. by its Regional Director /
Additional Commissioner
143, Sterling Road,
Chennai - 600 034.

3.E.S.I. - Regional Corporation (Tamil Nadu)
Rep. by its Asst. Deputy Director
143, Sterling Road,
Chennai - 600 034.

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Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to dated 02.02.2021 in No.TN/D-18/INS.8/51-00-100149-000-1303/D-18 on the file of the 2nd respondent and the consequential notice dated 02.02.2021 in No.TN/INS.8/51-00-100149-000-1303 on the file of the 3rd respondent in respect of the petitioner

school and quash the same, directing the respondents to consider the waiver of arrears of contribution, interest and damages under Section 91C of ESI Act, 1948, in terms of the order dated 29.07.2020 of the Full Bench of this Court in the batch of Writ Petitions in W.P.No.34236 of 2019.

For Petitioner: M/s.Father Xavier Associates

For Respondent-1:Mr.V.Kathirvelu
Special Government Pleader

For Respondents 2&3: Mr.G.Bharadwaj

O R D E R

The petitioner is a School. Recently, the Hon'ble Full Bench of this Court in ALL INDIA PRIVATE EDUCATIONAL INSTITUTIONS ASSOCIATION VS. STATE OF TAMIL NADU REP. BY PRINCIPAL SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT [2020 (5) CTC 93] has held that even the Educational Institutions falls within the purview of the Employees' State Insurance Act, 1948. Thereafter, a question has arisen as to whether the recovery of contribution will be prospective or retrospective. However, the Court has considered view and given a direction to the ESI Corporation to decide it under Section 91(C) of the Employees' State Insurance Act, 1948 and liberty was granted to the petitioner therein to approach this Court.

2.In a similar circumstance, Hon'ble Mr.Justice R.Suresh Kumar, in W.P.No.15405 of 2020, dated 29.10.2020, has passed a detailed order, in respect of disposing of the Appeal filed by the Educational Institution and the relevant portion of the said order reads as under:

"21.In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"(i)That the impugned order is set aside.

(ii)The matter is remitted back to the respondents / Employees State Insurance Corporation for reconsideration.

(iii)While making such reconsideration, the mandate given by the Full Bench of this Court (2020 (5) CTC 93) in Paragraph Nos.129 to 133 shall be taken into account by the Employees- State Insurance Corporation.

(iv)Also, apart from the reasons stated in Rule 53 of the Employees-State Insurance Rules, the present economic situation, due to Covid~19, Pandemic and also the non~contribution towards Employees- State Insurance funds or Employees- State Insurance Contribution in the yester years either from the Management of the Institutions or from the teaching and non~teaching staff by virtue of the Fee Determination Committee-s decision, to collect the fixed tuition fee from the students, shall also be taken into account.

(v)By taking into account of all the aforesaid aspects and points indicated above in the discussion, the final order shall be passed by the respondents / Employees- State Insurance Corporation with regard to waiver or write~off under Section 91~C of the Act.

(vi)While considering the same, opportunity of being heard shall also be given to the petitioner /

Management by giving separate notice to that effect.

(vii) On receipt of such notice, it is open to the petitioner/Management to give any additional particulars or documents in support of the claim of the petitioner to seek write-off or waiver under Section 91-C of the Act and accordingly, final order shall be passed by the Employees- State Insurance Corporation as early as possible."

3. The second respondent issued a notice dated 02.02.2021 seeking employer's share contribution and the petitioner was also directed to appear before them for personal hearing with respect to the payment towards damages. Consequently, the third respondent also passed an order dated 02.02.2021 claiming interest to the tune of Rs.13,19,692/-.

4. From the materials placed before this Court, it is seen that the impugned orders are only notices fixing the date for personal hearing; claiming damages and interest and therefore, this Court is not inclined to interfere with the same.

5. Considering the facts and circumstances of the case, the petitioner is directed to make a representation / appeal to the respondents setting out all their grievances for exemption of payment of interest and damages within a period of four weeks from the date of receipt of a copy of this order.

6. On receipt of such representation, the respondents are directed to consider the same, in the light of the Full Bench judgment of this Court in ALL INDIA PRIVATE EDUCATIONAL INSTITUTIONS ASSOCIATION VS. STATE OF TAMIL NADU REP. BY PRINCIPAL SECRETARY TO GOVERNMENT, LABOUR AND EMPLOYMENT DEPARTMENT [2020 (5) CTC 93] as well as the judgment of the learned Single Judge of this Court in W.P.No.15405 of 2020 dated 29.10.2020 and pass a well reasoned order, after giving

an opportunity of personal hearing to the petitioner as well as to produce all the records. The said exercise shall be completed by the respondents within a period of eight weeks from the date of receipt of such representation.

7.A further direction is given to the petitioner to appear before the Authority on the date to be fixed by them for personal hearing as well as for production of documents.

8.The Writ Petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

TK

To

- 1.The Principal Secretary
Government of Tamil Nadu
Labour and Employment Department
Fort St. George, Chennai - 600 009.
 - 2.The Regional Director / Additional Commissioner
E.S.I. - Regional Corporation (Tamil Nadu)
143, Sterling Road, Chennai - 600 034.
 - 3.The Asst. Deputy Director
E.S.I. - Regional Corporation (Tamil Nadu)
143, Sterling Road, Chennai - 600 034.
- 1 cc to M/s. G. Bhardwaj, Advocate SR.20133
 - 1 cc to M/s. Father Xavier Associates SR21164
 - 1 cc to M/s. Government Pleader Sr.20535

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SSN(CO)

EU 6.5.2021