

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13293 of 2021
and WMP.No.14115 of 2021

Rajaguru Spinning Mills (P) Limited., (Unit III),
Rep.by its Director - B. Siva Kumar
S.F.No.411, Patharai,
Veppadai,
Pallipalayam,
Erode 638 008. Petitioner

-vs-

1. Recovery Officer
Office of the Recovery Officer,
Regional Office (SRO Salem)
Employees' State Insurance Corporation
ESI Corporation, 39/57
Three Roads, Salem 636 009.
2. Appellate Authority
Regional Office (SRO Salem)
Employees' State Insurance Corporation
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem 636 009.
3. The Branch Manager,
Axis Bank,
Annamalai Complex, Sathy Main Road,
K.Kulam, Veerappan Chathiram,
Periasemur 638 004.
4. The Branch Manager,
State Bank of India,
Commercial Branch,
78/79, CD Building
Park Road,
Erode - 638 003. ... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent, 3rd and 4th respondents to revoke the attachment of Petitioner's bank accounts till such time the

petitioner files petition under Section 75 of the ESI Act before the Employees State Insurance Court, Salem challenging the order of the second respondent dated 08.02.2021.

For Petitioner : Mr.S.Ravindran
Senior Counsel for
Mr.M.Arumugham

For Respondents : Mr.C.V.Ramachandramurthy
for R1& R2

ORDER

This writ petition has been filed, seeking a direction to the 1st respondent, 3rd and 4th respondents to revoke the attachment of Petitioner's bank accounts till such time the petitioner files petition under Section 75 of the ESI Act before the Employees State Insurance Court, Salem challenging the order of the second respondent dated 08.02.2021.

2. Learned Senior Counsel appearing for the petitioner / Management submitted that the Management has got sufficient time to approach the ESI Court and the time limit prescribed therein is three years and therefore, no coercive action shall be taken, as has been done in the present case on hand. He further submitted that an Appeal under Section 45AA has been preferred and the same has been rejected in February 2021 itself. When the time limit for approaching the ESI Court is available, no coercive action shall be taken in the light of the judgment in the case of Pyramid Siamira Threatre Ltd., Vs Regional Provident Fund Commissioner, Chennai and another reported in (2009) 4 LLJ 893.

3. Mr.C.V.Ramachandramurthy, learned counsel appearing for the respondents 1 & 2 submitted that the Management has deposited 25% of the amount, while preferring an intra departmental appeal under Section 45AA of the ESI Act, 1948 and that final order has been passed in February 2021. Since the Management has approached this Court after initiation of action against them, the writ petition itself not maintainable, as the Management, without exhausting the remedy under Section 75 of the ESI Act, has approached this Court.

4. Heard both sides and perused the materials available on record.

5. It is not in dispute that the Bank attachment has been made pursuant to the order dated 08.02.2021 passed under Section 45AA of the ESI Act, 1948 and that the Management had already deposited 25% of the amount determined under Section 45A of the ESI Act 1948. The main contention of the Management is that when

they have got time to approach the Authority / ESI Court, the action of the respondents is perverse in law. If the said contention of the Management is accepted, it would amount that the ESI Corporation shall have to be keep quiet for a period of three years and watch the violator as to whether any appeal under Section 75 has been filed and three years limitation is over or not. Therefore, the aforesaid contention is summarily rejected. This Court, in the given circumstances of that case in Pyramid Saimira Theatre Ltd., Vs Regional Provident Fund Commissioner, Chennai and another (supra) held that the time limit prescribed is only 120 days and hence, the EPFO will have to wait for a period of 120 days before taking any coercive action. The same yardstick cannot be applied in every case without looking into its reality or background of the case.

6. Even though the period of limitation prescribed is three years, it is to be noted that some of the employers may take recourse to law with immediate effect or some of them may disappear from the scene and in that event, it is very difficult for the ESI Corporation to keep a watch over them and ascertain whether any appeal has been preferred within three years or not. The ESI Corporation is bound to take coercive action, which would make the employer to file an appeal under Section 75 of the ESI Act. This Court has already held that the Legislatures must think of reducing the period of time limit prescribed under the ESI Act to prefer an appeal and reduce the period from three years to one year, as the Court has no power either to legislate or to make any amendment to the Act. After one year and within three years, the ESI Court can entertain the dispute under Section 75 provided the entire amount is deposited and that beyond one year, the waiver application cannot be entertained. On one such occasion, the Hon'ble Apex Court in the case of Krishna District Co-operative Marketing Society Limited vs. N.V.Purnachandra Rao, (1987) 4 SCC 99, had suggested for amendment of the provisions of the Industrial Disputes Act and the relevant paragraph is extracted hereunder:

"11. We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by enacting section 41 providing for a machinery for settling disputes arising out of termination of

service which can be resorted to by an individual work- man. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all- India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feel that the Central Act passed forty years ago needs a second look and requires a comprehensive amendment."

7. Of course, the aforesaid decision has been rendered, while considering the case under Industrial Dispute Act 1947 and the principle with regard to amendment to various Labour Law Enactments has to be seen in this present day context. In the present case on hand, though the Writ Petition is not maintainable and that remedy is available under Section 75 to circumvent an order under Section 75, the present writ petition has been filed without moving the ESI Court.

8. Considering the facts and circumstances of the case and in the interest of the beneficiaries of the employees and their families, the Writ Petition is disposed of with the following directions, in order to give an opportunity for early adjudication:

i) The Management / Employer is permitted to move the ESI Court on deposit of further sum of 10% over and above 25% already deposited, and on such deposit, the ESI Court, instead of deciding the waiver application, can straight away decide ESI OP at the earliest point of time. Till an order is passed by the

ESI Court in the stay petition (after deposit of 10% of the amount over and above 25%), there shall be an order of interim stay of the operation of the impugned order. Once the application is filed before the ESI Court, 35% of the amount stated supra can be taken into account, while deciding the stay application therein.

ii) The Management shall deposit the aforesaid amount within a period of two weeks from the date of receipt of a copy of this order and in the event of the Management not depositing the amount in time, the concerned Respondents are at liberty to proceed further as per the impugned order;

iii) ESI Corporation shall lift the attachment order so as to enable the Management / Employer to operate the Bank Account. The attachment order shall be lifted forthwith in order to enable the employer to pay the salary and to comply with the orders of this Court in this writ petition.

9. It is made clear that this Writ Petition has been entertained as a special case, owing to the present pandemic situation and this cannot be taken as a precedent for other employers to approach this Court with the similar request as the remedy is only under Section 75 of the ESI Act and thereafter under Section 82 if any adverse orders are passed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1. Recovery Officer

Office of the Recovery Officer,
Regional Office (SRO Salem)
Employees' State Insurance Corporation
ESI Corporation, 39/57
Three Roads, Salem 636 009.

2. Appellate Authority

Regional Office (SRO Salem)
Employees' State Insurance Corporation
39/57, Theerthamalai Vaniga Valagam,
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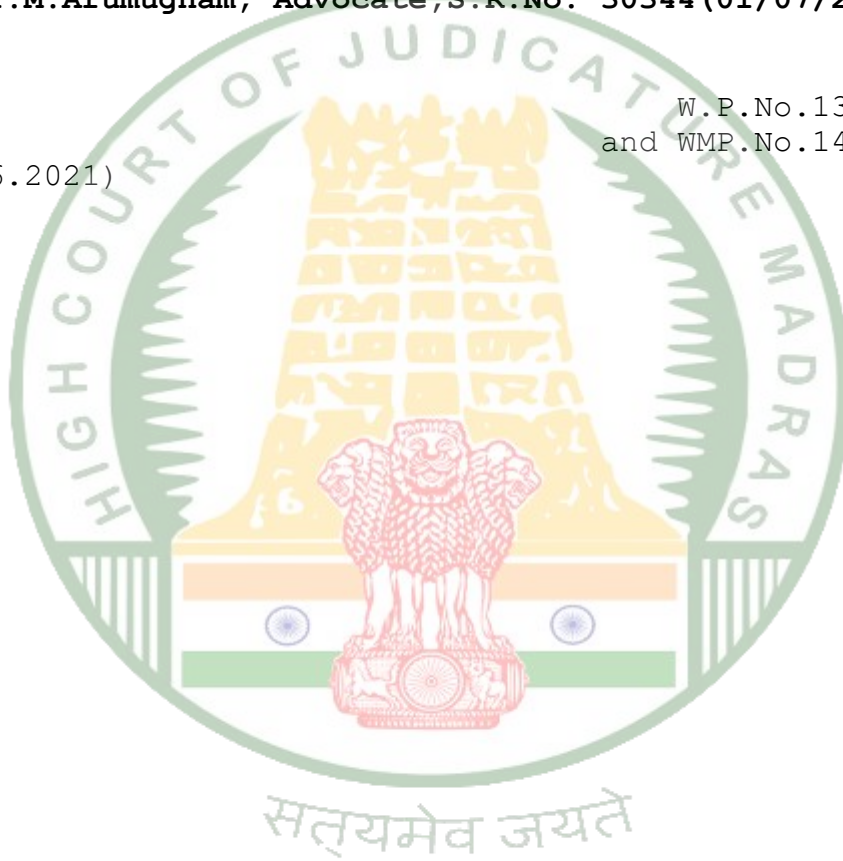
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4. The Branch Manager,
State Bank of India,
Commercial Branch, 78/79, CD Building
Park Road, Erode - 638 003.

+1cc to Mr.M.Arumugham, Advocate,S.R.No. 30344 (01/07/2021)

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A.SK(30.06.2021)



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