



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.14813 of 2011

and

M.P. (MD) .No.1 of 2011

R.P.P.Subramanian

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The E.S.I. Corporation,
Rep. through its Joint Regional Director,
Sub Regional Office,
Municipal Shopping Complex,
Salai Street, Sindupoondurai,
Tirunelveli- 627 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned order on the file of the first respondent in his proceedings in E.S.I.OP.No.13/2009 dated 23.09.2011 and quash the same and consequently grant the relief as prayed in the E.S.I.OP.No.13/2009.

For Petitioner : Mr.J.Jeyakumaran

For Respondent No.2 : Mr.N.Dilipkumar
Standing Counsel

Respondent No.1 : Labour Court

O R D E R

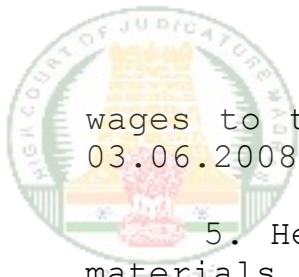
This writ petition has been filed against the impugned order passed by the first respondent in E.S.I.OP.No.13/2009 dated 23.09.2011 and for a consequential relief as sought for in the said E.S.I.OP.No.13/2009.



2. The case of the petitioner is that the petitioner is running a power loom in order to manufacture cotton sarees and registered the said unit at Small Scale Industries and Government of Tamilnadu, Department of Industries and Commerce. Totally, the petitioner is having twelve powerlooms, out of which he leased out six powerlooms to one Manikandan in the year 2007 and running the remaining six powerlooms with the help of three workers. Hence, the Employees State Insurance Act is not applicable to the petitioner. At that time, the Central Government issued notification by covering T.N.Pudukudi in E.S.I.Act with effect from 01.02.2008. In the meanwhile, the second respondent ESI Inspector inspected the petitioner's premises and informed that the ESI Act is applicable to the petitioner's establishment and recorded in the visit note as if the petitioner is engaged 15 workers and further threatened him to countersign in the said book. Thereafter, the second respondent has allotted code number and notice under Form C 11 dated 28.02.2008 was issued to the petitioner. Again the second respondent issued Form C 18 dated 10.04.2008 for the period from 2/08 to 3/08 instructing the petitioner to pay Rs.10,725/- in respect of 15 workers wages at the rate of Rs.5500/- p.m., and after affording an opportunity of personal hearing to the petitioner, the enquiry was adjourned to 12.05.2008. Since the petitioner was unable to attend on 12.05.2008, the second respondent without hearing the petitioner, passed an order under Section 45-A of the Act dated 03.06.2008 simply confirming the Form C-18 notice amount and directed the petitioner to pay Rs.10,725/- and also issued a recovery notice in 57/RRC/31030-11/181/08 dated 01.08.2008 and the same was challenged by the petitioner in E.S.I.O.P.No.13/2009 and the same was dismissed by the Labour Court. Hence, this writ petition.

3. The learned counsel for the petitioner would submit that the main contention raised by the petitioner before the Labour Court is without affording an opportunity of personal hearing of the petitioner and to produce relevant documents at the time of hearing, the second respondent passed the order, however, without considering the said contention, the Labour Court dismissed the petition on the ground that the petitioner engaged 15 workers and ESI Act is applicable to him and confirmed the order of recovery passed by the second respondent. Hence, the order of the Labour Court is not sustainable one and the petitioner is not coming under the purview of the ESI Act and therefore, he prays for allowing this writ petition.

4. The learned counsel for the second respondent would submit that after analyzing the oral and documentary evidence adduced by both side, the Labour Court arrived a conclusion that the petitioner comes under the ESI Act and he is entitled to pay the



wages to the employees as ordered by the second respondent dated 03.06.2008, which was passed under Section 45-A of the Act.

5. Heard the submissions made on either side and perused the materials available on record.

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6. Perusal of the averments of the petitioner makes it very clear that the petitioner owned twelve powerlooms out of which he leased out six powerlooms to one Manikandan in the year 2007 and running the remaining six powerlooms with the help of three workers. However, the second respondent ESI Inspector inspected the petitioner's premises and found that the petitioner engaged 15 workers and subsequently, the second respondent has allotted code number and issued notice under Form C-11, dated 28.02.2008 and also issued Form C-18, dated 10.04.2008 for the period from 2/08 to 3/08 instructing the petitioner to pay Rs.10,725/- in respect of 15 workers wages at the rate of Rs.5500/- p.m., and after affording an opportunity of personal hearing to the petitioner, the second respondent passed an order under Section 45-A of the Act dated 03.06.2008 simply confirming the Form C-18 notice amount and directed the petitioner to pay Rs.10,725/- and also issued a recovery notice in 57/RRC/31030-11/181/08 dated 01.08.2008, which was challenged by the petitioner in E.S.I.O.P.No.13/2009 and the same was dismissed by the Labour Court.

7. Considering the facts and circumstances of the case, I am of the view that the adjudicating authority as well as the Trial Court after analyzing the oral and documentary evidence adduced by both side, arrived a conclusion that the petitioner engaged 15 labourers in his powerlooms and hence, the order of the second respondent as well as the Labour Court cannot be interfered with, unless a strong material is produced before this Court to prove that the order of the Labour Court is perverse. In the absence of such material, this writ petition deserves to be dismissed and accordingly, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is also dismissed.

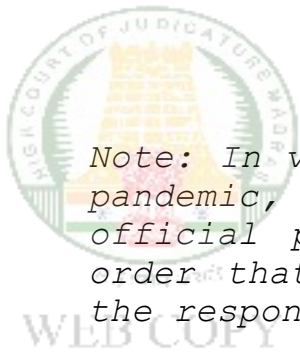
Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Presiding Officer,
Labour Court,
Tirunelveli.

Copy to
The Record Keeper-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.(for sending @ if any)

+1 CC to Mr.N.DILIP KUMAR, Advocate (SR-6545[F] dated
22/02/2021)

W.P. (MD)No.14813 of 2011
22.02.2021

KM (17.03.2021) 4P 5C