BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P(MD)No.12932 of 2021
and
W.M.P(MD) Nos.10013 & 10014 of 2021

The Correspondent
Christhuraja Higher Secondary School
9-H, High Ground Road,
Palayamkottai - 627 002,
Tirunelveli District. ... Petitioner

Vs.

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

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

3. Sub - Regional Officer (Tirunelveli)
   E.S.I Corporation
   Rep. by its Director
   Panchdeep Bhavan,
   ESIC Complex Salai Street,
   Vannarpettai, Tirunelveli - 627 003.

4. Sub - Regional Officer (Tirunelveli)
   E.S.I. Corporation
   Rep. by its Assistant Director,
   Panchdeep Bhavan,
   ESIC Complex Salai Street,
   Vannarpettai,
   Tirunelveli - 627 003. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned notices issued by the fourth respondent Assistant Director in Ref.No.66-00-041629-000-1302/45-A/SRO/TLI/621-14/ 99/2021 dated 29.06.2021 demanded the school to contribute to the tune of Rs.2,93,039/- for the period from 02.01.2013 to June 2014 and vide consequential impugned proceeding in Ref.No.66-00-041629-000-1302/45-A/SRO/TLI/2213-19/100/2021 dated 29.06.2021 demanding the school to pay Rs.18,95,770/- for the period from July 2014 to December 2019, quash the same and further direct the fourth respondent Assistant Director herein to extend the benefit of "Write off" of the arrears of contribution, interest and damages from January 2013 to December 2019 as per a batch of cases starting with W.P.No.34236 of 2019 dated 29.07.2020 and the petitioner's representations dated 18.11.2020 and 12.07.2021.

For Petitioner : M/s.A.Amala
For Respondents : Mr.A.K.Manikkam
Government Counsel – For R1
: Mr.N.Dilipkumar
Standing Counsel for R2 to R4

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notices issued by the fourth respondent Assistant Director in Ref.No.66-00-041629-000-1302/45-A/SRO/TLI/621-14/99/2021 dated 29.06.2021 demanding the school to contribute to the tune of Rs.2,93,039/- for the period from 02.01.2013 to June 2014 and vide consequential impugned proceeding in Ref.No.66-00-041629-000-1302/45-A/SRO/TLI/2213-19/100/2021 dated 29.06.2021 demanding the school to pay Rs.18,95,770/- for the period from July 2014 to December 2019, quash the same and further direct the fourth respondent Assistant Director herein to extend the benefit of "Write off" of the arrears of contribution, interest and damages from January 2013 to December 2019 as per the batch of cases starting with W.P.No.34236 of 2019 dated 29.07.2020 and the petitioner's representations dated 18.11.2020 and 12.07.2021.

2. The case of the petitioner is that the petitioner School is one among the several educational institutions run by the Society, namely the Congregation of the Brothers of the Sacred Heart of Jesus, Palayamkottai. The Government of Tamil Nadu has issued a Government Order in G.O.Ms. No. 237, Labour and Employment (K1) Department (K1), dated 26.11.2010 in respect of extension of the Employees' State Insurance Act, 1948 to the Educational institutions (excluding Government and Government aided institutions). Subsequent to this, the Educational Institutions were forced to remit the contributions of employers and employees to ESI Corporation from December 2010 onwards.

3.It is the further case of the petitioner that the above issue, namely whether the educational institutions come under the purview of E.S.I.Scheme was finally decided by the Full Bench of this Court in a batch of Writ Petitions commencing from W.P. No.34236 of 2019 dated 29.07.2020, wherein the applicability of the E.S.I. Act to all the Educational Institutions was upheld by the Full Bench. However, considering the pandemic situation, the Full Bench recommended for waiver of arrears under section 91C of the Act, in the event of receipt of such application from the Institutions. The relevant paragraphs are extracted hereunder:

> *130. This matter was heard and reserved for orders just before the preparations for lock down of the Country on account of COVID-19 pandemic were announced. Thus, in addition to whatever we have stated above on the merits of the issue referred to us, we are also of the view that the present economic conditions necessitate some leeway and negotiations in the matter of settlement of arrears due by the Educational institutions.*
>
> *131. Section 91 C of the ESI Act comes to aid. Section C provides for the writing off of loss and states as follows:*
>
> *"91C. Writing off of losses.Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount."*
>
> *132. A provision is, thus, made for the Corporation to sanction the writing off of the contribution, interest and damages due to it if the Corporation is of the opinion that such amounts are irrecoverable from the Educational Institutions concerned. The Pandemic has resulted in a situation where several Educational Institutions are reportedly unable to even pay regular salaries to their employees. The financial crunch faced by them, at this juncture, is a matter of public knowledge. The impugned notification no doubt mandates certain contributions to be made and we have upheld the validity of the same. The contributions to be made under the Notification ensure to the coffers of the Corporation and it is not the Corporation's case that there are claims that have been made by the employees of the*

Educational Institutions that remain unfulfilled on account of the failure of the Institutions to make the contribution in the first place. No prejudice has thus been caused to the employees per se for the periods till date on account of such failure by the Educational Institutions.

133. We, thus, strongly recommend that the provisions of Section 91 C be applied in letter and spirit by the Corporation in considering the case for reduction/waiver of pending arrears, if and when made by the Educational Institutions. Such requests, if and when made, shall be considered by the Corporation in line with the object and spirit of Section 91 C, particularly in the light of the present economic conditions."

4. In the light of the aforesaid Full Bench Judgment, the learned counsel for the petitioner seeks to consider the grievance of the petitioner and grant exemption in the payment of arrears of contribution towards the employees provident fund.

5.According to the petitioner, during the Pandemic situation, schools were not able to collect the fees from most of the students and therefore they were not able to pay salary to the teachers. Further, it is submitted that the recovery of the said arrears amount is liable to be written off by the respondent, as contemplated under section 91 C of the ESI Act. It is also argued that in view of the attempt made by the respondent to recover the aforesaid huge arrears of amount during this period of pandemic menace, the same causes great hardship. Therefore, it is submitted on behalf of the Petitioner that present economic situation of the petitioner school will have to be considered while granting relief to the petitioners. It is further submitted that the petitioner also undertakes to pay the said amount by way of 20 equal instalments to the respondent.

6. Mr. A.K. Manikkam, learned counsel for the respondent department argued that the petitioner cannot seek exemption by taking shelter citing the present situation. The writ petitioner has to pay the entire amount, including the arrears, to the respondent department. The petitioner institution has already got the benefit of interim order from paying the said ESI contribution fund to the respondent. Further, he has insisted upon the fact that there would be no exemption to the petitioner.

7. It is relevant to incorporate the provisions under Section 91 C, which reads as follows:

"91C. Writing off of losses.Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount."

8. The condition for such write off as prescribed by the Central Government is given in rule 53 of ESI (Central) rules 1950 which reads as follows:

> *"Writing off of losses- (1) where the Corporation is of the opinion that the amount of contribution, interest and damages due to the Corporation has become irrecoverable, the Corporation or any other officer authorised by it in this behalf may sanction the writing off of the said amount, subject to the following conditions, namely:-*
>
> *(i) establishment or factory has been closed for more than five years and the whereabouts of the employer cannot be ascertained, despite all possible efforts;*
>
> *(ii) claim for contribution is not fully met by-*
> *(a) the official liquidator in the event of factories/establishments having gone into liquidation; or*
>
> *(b) the Commissioner, of payments in the event of unit being nationalised or taken over by the Government."*

9. In view of the aforesaid Rule 53 incorporated as above, the writ petitioner seeks exemption under the aforesaid category but however considering the present pandemic situation, the writ petitioner institution cannot pressurize the students to pay the entire fees from all the students. Further, the Petitioner-institution also has to face the burden of paying salaries to the teachers and staff. On a fair consideration of all these aspects, both relating to the petitioner as well as the respondents, this court is inclined to consider the said claim of the petitioner by granting instalments to the petitioner to pay the said aforesaid amount payable to the respondent corporation. Therefore, in view of the above, this Court is inclined to direct the petitioner to pay to the respondent the arrears of amount in 20 equal monthly instalments. The learned counsel for the petitioner agreed that

the writ petitioner will pay the entire arrears amount in 20 equal monthly instalments to the respondent corporation. Learned counsel for the respondents states that in the event of failure on the part of the petitioner in the payment of instalments, then the respondent-corporation may proceed against the petitioner-school for payment of arrears in lump sum. This Court is further inclined to direct that if the said amount is not paid within the aforesaid period and if there is default, then the respondent corporation will be at liberty to proceed as against the petitioner-institution by following the procedure as contemplated under law.

10. In view of the above, the Writ Petition stands disposed of with the following direction The impugned order is modified and the petitioner institution is directed to complete payment of the arrears amount to the respondent by way of 20 equal monthly instalments, payable on or before the 10th of every calendar month, commencing from 10th of September, 2021, failing which the respondent will be at liberty to proceed against the petitioner-institution in accordance with law and as per relevant rules. The petitioner shall also file an undertaking before the respondent within a period of two weeks from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition stands disposed of. No costs. Consequently the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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:

1. The Secretary,
   Labour and Employment Department,
   Fort St. George, Chennai 600 009.

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   Rep. by its Regional Director,
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   ESIC Complex Salai Street,
   Vannarpettai,
   Tirunelveli - 627 003.

+1 CC to M/s.A.AMALA, Advocate (SR-25748[F]
dated 10/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-25830[F]
dated 10/08/2021)

+1 CC to M/s.GP (SR-25943[F]
dated 11/08/2021)

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