



W.P.Nos.3557 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

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THE HON'BLE MR JUSTICE D. KRISHNAKUMAR

W.P.Nos.3557 of 2022

&

W.M.P.Nos.3688 of 2022

Vidya Vikas Matriculation Higher

Secondary School,

Rep. by its Correspondent Mr.Sureshkumar,

(under the management of Vidya Vikas Educational Trust),

Chikrampalayam, Karamadai Post,

Coimbatore 641 104.

... Petitioner

Vs.

1. The State of Tamil Nadu,

Rep. by its Principal Secretary to Government,

Labour and Employment Department,

Fort St. George, Chennai 600 009.

2. Employees' State Insurance Corporation,

Rep. by its Regional Director,

Sub Regional Office (SRO-Coimbatore),

1897, Trichy Road, Panchdeep Bhavan,

Ramanathapuram, Coimbatore 641 045.

3. Indian Overseas Bank,

Rep. by its Branch Manager,

Karamadai Branch, Main Road,

Karamadai, Coimbatore 641104.



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4. HDFC Bank, rep. by its Branch Manager,
PRN Palayam Branch, 325, Mettupalayam Road,
Near Jothipuram Post Office,
PRN Palayam, Coimbatore 641 047.

5. Canara Bank,
Rep. by its Branch Manager,
Karamadai Branch, No.19/78,
Kovai Mettupalayam Main Road,
Karamadai, Coimbatore 641 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 27.05.2019 under Ref.No.56-00-110752-000-1302/INS-IV/SRO and subsequent certificate bearing No.CR47309 issued on 20.08.2019 and quash the same and direct the respondents to waive/write - off the amount demanded, under Section 91-C of the ESI Act, 1948.

For Petitioner : Mr.P.Muthusamy

For Respondents : Mr.P.Balathandayutham,
Spl. Govt. Pleader for R1

Mr.T.N.C.Kaushik, for R2

ORDER

This writ petition has been filed seeking to issue a Writ of Certiorari, quashing the impugned order dated 27.05.2019 under



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Ref.No.56-00-110752-000-1302/INS-IV/SRO and subsequent certificate bearing No.CR47309 issued on 20.08.2019 and direct the respondents to waive/write -off the amount demanded, under Section 91-C of the ESI Act, 1948.

2. The case of the petitioner in brief:

The petitioner school is a self financing and fee-based Institution. The petitioner, as a private institutions, are collecting fees from the students, as per the norms fixed by the Government and no provisions were made to allocate the contribution to ESI. The ESI had issued Notification in the year 2008, extending the ESI Act 1948 to all educational institutions, excluding the government and government aided institutions.

2.1. The 2nd respondent, without affording any opportunity of hearing the petitioner, has passed impugned order dated 27.05.2019 and issued certificate dated 20.08.2019, demanding the petitioner to pay a sum of Rs.23,20,492/-., which is illegal and in violation of principles of natural justice. With regard to the similar issues, various writ petitions



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had filed and the Full Bench of this Court, while passing orders on 29.07.2020 in W.P.No.34236 of 2019 etc. batch, has mandated to apply provision under Section 91(c) of the ESI Act to waive/writ off the arrears. Therefore, the impugned orders, demanding the past contributions with interest, cost and penalty is highly illegal. Hence this writ petition.

3. The learned counsel appearing for the petitioner submitted that as per Sect.91(c) of the Employees State Insurance Act, the power has been vested with the Employees' state Insurance Corporation to give waiver or write off with arrears, interest etc. to any organizations, institutions, establishments, if it is in the opinion of the Corporation that such amount of dues cannot be recovered. Hence, the impugned orders may be quashed and second respondent may be directed to consider the plea of the petitioner.

4. In the notice of demand dated 20.08.2019, the following amounts are demanded by the 2nd respondent and is extracted hereunder.



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Sl.No.	<i>Details the amount to be recovered and period involved</i>	<i>Amount</i>
1	Contribution 4/2011 to 11/2012	Rs.12,87,000
2	Interest under Sec.39(5) of ESI Act up to 18.08.2019	Rs.11,51,202
3	Damages under Sec.85(b) of ESI Act	-
4	Cost	Rs. 3,657
5	Further Interest @423.12. per day w.e.f.19.08.2019 till the date of payment	

5. The learned counsel appearing for the respondents submitted that, as far as the contribution amount is concerned, the petitioner has to strictly complied with the notice of demand. However, the petitioner may be directed to pay the contribution amounts in monthly installments, as directed by this court, but, in default to pay even one installment, the respondent is at liberty to proceed further, in accordance with law. He further submitted that, as far as the interest portion is concerned, if the petitioner made any representation, the same will be considered and appropriate orders will be passed, in accordance with law, within a time, as fixed by this court.



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6. Inview of the above submissions and consent of both the parties, this court is inclined to pass the following orders.

i) In so far as the Contribution amount is concerned, the petitioner is directed to pay the contribution amount of Rs.12,87,000/- (twelve lakhs eighty seven thousand) in six equal monthly installments, commencing from March 2022.

ii) The first installment shall commence from 10.03.2022 and the petitioner is directed to pay remaining five installments, on or before 10th day of every succeeding calender months.

iii) If the petitioner is failed to pay even one installment, the second respondent is at liberty to proceed further, in accordance with law.

iv) In so far as the demand of interest and other charges are concerned, the petitioner is directed to make representation, or objection before the second respondent corporation,

v) On such representation being made by the petitioner, the second respondent is directed to consider the same and pass appropriate orders, in accordance with law, within a period of three months from the date of receipt of representation.



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vi) Till such time, the operation of the order of notice dated 27.05.2019 and the notice of demand dated 20.08.2019 issued by the second respondent shall be kept in abeyance.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

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Index: Yes/ No
Internet : Yes/No
mst

To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Labour and Employment Department,
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2. Employees' State Insurance Corporation,
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D. KRISHNAKUMAR,J.
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&
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