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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3178 of 2022
and WMP.Nos.3333 & 3334 of 2022

C.S.I.Bain Matriculation Hr.Sec.School,
Rep.by its Correspondent,
Mr.Geoffery Keenth Francis No.4,
CSI School Street, Kodungaiyur, Chennai - 600 118.
... Petitioners

Vs

- 1.The Government of Tamil Nadu,
Represented 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,
143, Sterling Road,
Chennai - 600 034.
- 3.E.S.I. - Regional Corporation (Tamil Nadu),
Rep.by its Deputy Director,
143, Sterling Road,
Chennai - 600 034.
- 4.E.S.I. - Regional Corporation (Tamil Nadu),
Rep.by its Recovery Officer,
143, Sterling Road,
Chennai - 600 034.
... Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings dated 29.12.2021 in No.51001065810001302/CP/462539 CCR - 106678, 51001065810001302/CP/462540 CCR - 106679 and 51001065810001302/CP/462536 CCR - 106680, issued by the 4th respondent in respect of the petitioner school and quash the same, directing the respondents to waiver of arrears of interest and the contribution calculated on omitted wages.

For Petitioner: M/s.A.Arul Mary

For R1
<https://hcservices.ecourts.gov.in/hcservices/>

: Mr.V.Jeeva Giridharan
Additional Government Pleader



For R2 to R4 : Ms.Sandhya for
M/s.T.N.C.Kaushik
Government Advocate

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O R D E R

This Writ Petition has been filed to call for the records pertaining to the impugned proceedings dated 29.12.2021 in No.51001065810001302/CP/462539 CCR - 106678, 51001065810001302/CP/462540 CCR - 106679 and 51001065810001302/CP/462536 CCR - 106680, issued by the 4th respondent in respect of the petitioner school and quash the same, directing the respondents to waiver of arrears of interest and the contribution calculated on omitted wages.

2.The writ petitioner is challenging the impugned order of payment to pay the arrears of contribution of Rs.35,55,640/-.

3.Brief facts of the case:

(i).The petitioner's school is an unaided Educational Institution. The Government of Tamil Nadu has issued a G.O.Ms.No.237, Labour and Employment, (K1) Department, dated 26.11.2010 and extended the provisions of the employees' State Insurance Act, 1948, to the educational institutions except those which are run by Government and Government aided institutions. Pursuant to the said G.O.No.237, the third respondent has given a notice to the petitioner's School stating that immediate steps have to be taken for registration of all employees, by submitting declaration forms, payment of contribution and maintenance of records from the date of coverage from 29.12.2010 and to submit registration forms in Form 1.

(ii).The core issue of ESI coverage under G.O.Ms.No.237, was referred to the Hon'ble Full Bench of this Court, in batch of writ petitions in W.P.Nos.34236 of 2019 and by an order dated 29.07.2020, the Hon'ble Full Bench of this Court has held as follows:

"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 was 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 91 C provides for the writing off of loss and states as follows:

91(C).Writing off of losses Subject to the conditions as may be prescribed by



19.01.2021 and requested the Corporation to allow the petitioner to pay the contribution in instalments, but there was no response from the respondent corporation. The petitioner's school submitted another letter dated 24.01.2021 and requested the authorities to permit them to pay the arrears of contribution in 10 installments within a period of 10 months, due to Covid situation and the financial crisis of the school. But the same is still pending before the respondent. Hence, writ petition.

4.The learned counsel appearing for the petitioner submitted that the petitioner's School has made a representation to the respondents to consider and grant time for payment of the said amount by way of ten equal instalments due to the Covid Pandemic situation for the past two years. Apart from that the petitioner also requested to grant waiver of the arrears of the interest and the also contribution calculated on omitted wages. To that extent, he has made representations to the fourth respondent and without considering such representations, the respondent has now proceeded to recover the amount under the provisions of the Act.

5.The learned counsel appearing for the respondents submitted before this Court that the respondents have agreed to settle the amount by way of ten equal instalments and that the petitioner should pay the amount without any default.

6.Heard the learned counsel on either side and perused the materials placed on record.

7.On a perusal, insofar as the representation for the interest and other claims are concerned, the said representations made by the petitioner's School has to be considered by the respondents, if it is permissible in law. Taking note of the aforesaid submissions made by the parties and in view of the undertaking given by the petitioner before this Court that the petitioner's school will pay the aforesaid arrears amount of Rs.35,55,640/- by way of Ten equal installments to the respondent, this Court is inclined to direct the petitioner to pay the aforesaid amount in Ten equal instalments, commencing from April, 2022, each installment should be on or before 10th of the every succeeding English calendar month. If any default of payment of the amount, a liberty is given to the respondent to proceed in accordance with law. In so far as the interest, other wages and arrears are concerned, the request of the petitioner shall be considered by the third respondent within a period of two months from the date of receipt of a copy of this order. Till such time the respondent shall not proceed to recover the said amount from the petitioner unless if any default is made by the petitioner's Management.



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8. Accordingly, this writ petition stands dismissed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George, Chennai - 600 009.
2. The Regional Director,
E.S.I. - Regional Corporation (Tamil Nadu),
143, Sterling Road,
Chennai - 600 034.
3. The Deputy Director,
E.S.I. - Regional Corporation (Tamil Nadu),
143, Sterling Road,
Chennai - 600 034.
4. The Recovery Officer,
E.S.I. - Regional Corporation (Tamil Nadu),
143, Sterling Road,
Chennai - 600 034.

+2 ccs to Mr. Father Xavier, Advocate Sr.NO. 11454
+1 cc to Mr. T.N.C. Kaushik, Advocate Sr.NO. 11735
+1 cc to Government Pleader Sr.NO. 12033

W.P.No. 3178 of 2022
and WMP.Nos. 3333 & 3334 of 2022

MT (CO)
A.SK (25/03/2022)



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