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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.4804 of 2022
and
W.M.P.No.4912 of 2022

M/s.Jaya Matriculation Higher Secondary School,
(Under the Management of Jaya Educational Trust),
Rep. by its Managing Trustee,
CTH Road, Tiruninravur,
Thiruvallur District - 602 024.

... 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,
143, Sterling Road, Panchdeep Bhavan,
Chennai - 600 034.
- 3.Indian Overseas Bank,
Rep. by its Branch Manager,
Tirunintravur Branch, No.1B, MTH Road,
Krishnanagar ward No.11,
Thiruninravur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 27.05.2013 No.TN/Ins VIII/No-51001012750001302/5212013501/162/12 and TN/Ins VIII/No-51001012750001302/5212013505/162/12 dated 27.05.2013 and consequent garnishee order dated 07.01.2022 issued to 3rd respondent under Section 45-G of the ESI Act and to quash the same and direct the respondents to waive/write-off the amount of past contributions under Section 91-C of the ESI Act, 1948 in pursuance of the representation of petitioner dated 24.01.2022.



For Petitioner : Mr.P.Muthusamy

For Respondents: Mr.S.Rajesh Govt. Advocate for R1

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: Mr.G.Bharadwaj, Standing Counsel
for R2.

O R D E R

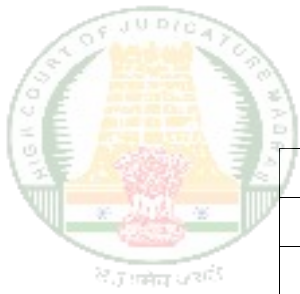
This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus quashing the impugned recovery orders dated 27.05.2013 and consequent garnishee order dated 07.01.2022 and consequently direct the respondents to waive/write-off the amount of past contributions under Section 91-C of the ESI Act, 1948 in pursuance of the representation of petitioner dated 24.01.2022.

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 notification issued by the ESI for contribution was challenged by various institutions and after delivering the the judgment by the Full Bench of this court, ESI contribution was extended to private educations institutions. After delivering the judgment of Full Bench, the second respondent, without affording any opportunity to exercise powers under Section 91-C of the Act, has passed the impugned Garnishee order dated 07.01.2022, thereby prohibiting the operations of the bank accounts maintained by the petitioner. While disposing the case, the Full Bench of this Court has mandated to apply provision under Section 91(c) of the ESI Act to waive/writ off the arrears. Further more, demanding the past contributions with interest, cost and penalty is illegal and as per the provisions of the ESI Act, the 2nd respondent cannot demand any arrears of contribution more than five years. Hence this writ petition.

3. In the notice under Section 45G of the Employee's State Insurance Act 1948 dated 07.01.2022, the following amounts are demanded by the 2nd respondent and is extracted hereunder.

1	Contribution Amount	Rs.15,58,874
2	Interest	Rs. 3,37,031
3	Further interest up to 07.01.2022	Rs.16,16,457



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1	Contribution Amount	Rs.15,58,874
4	Damages	Rs. 0
5	Cost and charges	Rs. 130
	Total	Rs.35,12,492

4. The learned counsel appearing for the petitioner submitted that, in view of the pandemic situation, the petitioner is not able to mobilize the huge amount as demanded by the second respondent within a short period and hence, seeks time to make the contribution amount in monthly installments. Further more, calculation of interest is disputed by the petitioner and hence, the petitioner may be permitted to make representation before the authorities concerned.

5. The learned counsels appearing for the respondents submitted that the demand under Section 45-G of ESI Act is challenged before this court. However, the petitioner shows their bonafide intention to pay the contribution amounts by way of installments. Therefore, if any orders passed by this court to pay the contribution amount in installments, it will be accepted by the authorities, subject to the condition that in default to pay even one installment, the respondent is at liberty to proceed further, in accordance with law. He further submitted that, the Hon'ble Supreme Court in its decision in C.A.No.8432 of 2001, dated 07.07.2008, has decided that "The liability to pay interest is statutory. There is no power of waiver. The question of any compromise or settlement does not really arise." Therefore, the petitioner has to pay the statutory interest. He further submitted that, since the petitioner has disputed the calculation of interest, he may give representation and the same would be considered by the authorities concerned and appropriate orders will be passed, in accordance with law, within a time, as fixed by this court.

6. In view of the above and taking into account the submission of the counsel for the petitioner that in view of the present Pandemic Situation, the petitioner cannot able to mobilize the huge amount of demand, within a short time, this court is inclined to grant time to repay the contribution amount in 10 equal monthly installments. The learned counsel for the respondents also has no serious objection.

7. Accordingly, it is ordered as follows:

i) In so far as the Contribution amount is concerned, the petitioner is directed to pay the contribution amount of Rs.15,58,874/- (Rupees fifteen lakhs fifty eight thousand eight hundred and seventy four only) in ten equal monthly instalments



commencing from April 2022.

ii) The first instalment shall commence from 10.04.2022 and the petitioner is directed to pay the remaining nine installments, on or before 10th day of every succeeding calendar 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, within two weeks from the date of receipt of copy of this order.

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.

vi) Till such time, the operation of the impugned orders dated 27.05.2013 and 07.01.2022 issued by the second respondent shall be kept in abeyance.

8. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

mst

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Labour and Employment Department,
Fort St.George, Chennai - 600 009.

2.Regional Director,
Employees' State Insurance Corporation,
143, Sterling Road, Panchdeep Bhavan,
Chennai - 600 034.



3.Branch Manager,
Indian Overseas Bank,
Tirunintravur Branch,
No.1B, MTH Road,
Krishnanagar ward No.11,
Thirunintravur.

+1cc to Mr.P.Muthusamy, Advocate SR.No.14520

+1cc to Mr.G.Bharadwaj, Advocate SR.No.14732

+1cc to Government Pleader SR.No.15018

W.P.No.4804 of 2022

NMI (CO)
GMY (11/03/2022)