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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.7040 of 2022

and

W.M.P.No.7075, 7076, 7077 of 2022

CSI Ewart Matriculation Higher Secondary School,
Plot No.22/1, Soundarya Colony,
Anna Nagar, West Extension,
Chennai 100 101.

...Petitioner

vs.

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

...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 pertaining to the impugned notice dated 12.10.2021 in No.51001007190001302/CP/452509 CCR-105281 on the file of 4th respondent, in respect of the petitioner school and quash the same, directing the respondents to waiver of interest.

For Petitioner : Dr. Father Xavier Arul Raj,
Senior Counsel
for M/s. Father Xavier Associates

For Respondents: Mr.S.Prabhakaran, Govt.Advocate for R1
Mr.G.Bharadwaj, Standing Counsel for R2 to 4



O R D E R

By consent of both the counsels, this writ petition is taken up for final disposal at the admission stage itself.

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2.This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus quashing the impugned notice of demand to defaulter dated 12.10.2021 and also directing the respondents to waiver of interest.

3.The case of the petitioner in brief:

The petitioner school was established and is being administered by the Church of South India, Diocese of Madras and it is an unaided School and they collecting fees from the students, as determined by the Tamil Nadu Private Schools Fee-Determination Committee. While that being so, the Government of Tamilnadu has issued a G.O.(MS)No.237 Labour and Employment(K1) Department dated 26.11.2010, extending ESI coverage to unaided/self financing educations institutions. The above G.O. was challenged by petitioner and by various institutions and thereafter, the batch cases were referred to the Full Bench of this Court. The Full Bench of this court vide its order dated 29.07.2020 in W.P.No.34246 of 2019, had extended the ESI contribution to the private Education Institutions Also.

3.1. After delivering of Judgment by the Full Bench of this Court, the third respondent had issued show cause notice dated 22.10.2020, to pay a sum of Rs.20,95,316/- and it was challenged by the petitioner by filing writ petition in W.P.No.18899 of 2020. This court vide order dated 21.12.2020 has passed order in W.P.No.18890 of 2020 and batch, thereby remanded back the matters to ESI Corporation for reconsideration and also gave further directions. Challenging the above order, the ESI Corporation has filed appeal in W.A.No.1444 of 2021 and it is still pending.

3.2. Subsequently, the fourth respondent issued impugned notice of demand to pay a sum of Rs.23,69,551/- towards contribution, interest and costs. The above notice is highly untenable, in the light of the orders passed by the Full Bench of this Court. While disposing the case, the Full Bench of this Court has directed the ESI Corporation to consider the cases in respect of all pending arrears of contribution, interest and damages for waiver and right off losses, inview of the pandemic lock down and the ensuingeconomic melt down. Further more, demanding payment of arrears of contribution with interest for the period from 12/2010 to 10/2020 up to 28/09/2021 is illegal. Hence this writ petition.



4. Heard the counsel for the petitioner and the counsel for the respondents.

5. In the impugned notice of demand dated 12.10.2021, the following amounts are demanded by the 4th respondent, as extracted hereunder.

1	Contribution Amount	from 12/2010 to 12/2020	Rs.14,07,939
2	Interest	up to 28/09/2021	Rs.9,61,547
3	Damages under Section 39(5) of ESI Act		0
4	Cost		Rs.65
5	Further interest	@462.88 per day w.e.f.29.09.2021 till date of payment	
	Total		Rs.23,69,551

6. 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 of Rs.23,69,551/- as demanded by the fourth respondent within a short period and hence, seeks time to make the above amount in monthly installments.

7. The learned counsels appearing for the respondents submitted that though the petitioner has challenged the impugned notice of demand dated 12.10.2021, they showed their bonafide intention to pay the amounts by way of installments. Therefore, if any orders passed by this court to pay the demanded 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 has also relied upon a decision of the Hon'ble Supreme Court in C.A.No.8432 of 2001, dated 07.07.2008, wherein, it is stated as follows:

6. As there was delay in making the payment of the contribution, the Corporation had issued notice on 29.06.1990 at the first instance and thereafter, the order passed under Section 45(A) of the Act on 23.07.1992. The same was challenged before the ESI Court, in which an interim Stay was granted on



10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is are closed.

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Sd/-
Assistant Registrar(CS-IX)

//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. The Regional Director,
ESI Regional Corporation (Tamil Nadu),
143, Sterling Road, Chennai - 600 034.
3. The Deputy Director,
ESI Regional Corporation (Tamil Nadu),
143, Sterling Road, Chennai - 600 034.
4. The Recovery Officer,
ESI Regional Corporation (Tamil Nadu),
143, Sterling Road, Chennai - 600 034.

+1cc to Mr.G.Bharadwaj, Advocate, S.R.No.20750

+2cc to M/s.Father Xavier Associates, S.R.No.20944

+1cc to the Government Pleader, S.R.No.21004

W.P.No.7040 of 2022

SSD(CO)
RGA(05/04/2022)