IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11976 of 2018

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The Principal Saraswati Vidya Mandir, Kadamkuan, Patna, through Satish Kumar Srivastava, son of Late Dhruv Prasad Srivastava, resident of village Bhopatpura, P.O. Mairwa, P.S. Mairwa, district Siwan ... Petitioner

Versus

1. The State Of Bihar through the Director Employees State Insurance Corporation, Regional Office, Patna
2. The Joint Director, Employees State Insurance Corporation, Regional Office,Patna
3. The Deputy Director, Employees State Insurance Corporation, Regional Office,Patna null null
4. The Deputy Director Recovery, Employees State Insurance Corporation, Regional Office,Patna
5. The Assitant Director, Employees State Insurance Corporation, Regional Office, Patna
6. The Branch Manager, Canara Bank Kadamkuan Branch, Kadamkuan Nawal Kishore Road, Kadamkuan, Patna ... Respondents

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Appearance :

For the Petitioner	:	Mr.Vijay Shankar Shrivastava, Adv.
For the ESIC	:	Mr.Sudhir Kumar Bijpuria, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

9 04-09-2023 Heard learned counsel for the parties.

2. The present Writ Petition is filed for the following relief(s) :

> *i) For issuance of a writ in the nature of Mandamus commanding and directing the respondents to make an inspection the records of the school namely Sarswati Vidya Mandir Kadamkuan, Patna (Petitioner's School) and thereafter to fix the liability of the employees contribution upon the school and the amount of Rs 2, 36,481/=00 paid in the E.S.I. Fund Account No 1, Patna to the Employees State Insurance Corporation Bihar, Patna be adjust.*

> *ii) For issuance of a writ in the nature of Mandamus commanding and directing the*

respondents to give opportunity to the petitioner to produce the documents of the school with regard to employees engaged for the period 1.9.11 to 31.12.17 and thereafter to make proper assessment of the employees' contribution who are the teaching and non-teaching staffs of the school Sarswati Vidya Mandir Kadamkuan

iii) For issuance of a writ in the nature of Certiorari for quashing the letter dated 28.5.18 issued under the signature of Deputy Director (Recovery) Employees State Insurance Corporation, Regional Office, Bihar, Patna as contained in annexure-9 to this writ petition, whereby and where under the Branch Manager (respondent no.6) is hereby prohibited and restrained till further order from making payment and or transfer from the accounts of the petitioner and in term of prohibitory order, the amount due is of Rs.1,29,595/- directed to hand over to the Employees State Insurance Corporation officials forthwith by way of pay order drawn in favour of the Employees State Insurance fund Account No.1 Patna. In the said letter it has been mentioned that in case the clear balance in the defaulters account (petitioner) is less than the amount demanded as above, remit the available balance and freeze the debit in the account and also to quash the certificate No. 7219 pending before the Deputy Director (Recovery) Employees Insurance State Corporation as contained in annexure-6 to this writ petition whereby and where under a demand of Rs.3,63,133/- has been made for the period 9/11-9/15 with interest.

iv) To grant any other relief or reliefs for which the petitioner is found entitled from the facts and circumstances of the case.

3. The brief facts for the purpose of deciding the controversy in the present case is that the petitioner is a school

run under the name of Sarswati Vidya Mandir, Kadamkuan, Patna. Pursuant to the notice issued by the Respondent-Corporation for non-payment of the contribution under the provisions of the Employees' State Insurance Act, 1948, (hereinafter referred to as, 'the Act') for the period of 01.09.2011 till 30.09.2015, the petitioner was directed to pay an amount of Rs.3,94,144/-. Thereafter, the petitioner has appeared before the authority and the authority duly taking into consideration the arguments put-forth by the petitioner, has reduced the contribution payable from Rs.3,94,144/- to Rs.2,36,481/-. The said order was passed under Section 45A of the Act on 21.07.2017. It is stated by the counsel for the petitioner that the said amount of Rs.2,36,481/- was paid by the petitioner on 20.04.2018, thereafter, the authorities have put the petitioner on notice for paying the contribution for the period 01.10.2015 to 31.12.2017 and the liability of the petitioner was fixed at Rs.2,55,792/-. As the petitioner did not pay the contribution amount of Rs.2,36,481/- within the stipulated period, the authorities issued another notice, dated 26.02.2018, demanding him to pay the amount of Rs.2,36,481/- together with the interest of Rs.1,21,964/-. The petitioner is assailing the assessment of the contribution fixed at Rs.2,36,481/- levy of interest of Rs.1,21,964/- in the present Writ Petition along with the notice, dated 06.02.2018, wherein the petitioner was directed to pay an amount of Rs.2,55,792/- as the employees contribution for the period 01.10.2015 till 31.12.2017 on the ground that no physical verification of the premises and the documents submitted by the petitioner was done.

4. Learned counsel has stated that the petitioner was not given an opportunity of hearing before passing the order under Section 45A of the Act. Further, it is stated that the authorities without inspecting the premises or going through the books of accounts, the income tax returns, the attendance registers, the service registers of the teaching and non-teaching staff working in the school has fixed the liability of the petitioner in an arbitrary manner and, therefore, prays this Hon'ble Court to allow the present Writ Petition and remand the matter back to the authority concerned for considering the objections of the petitioner and for re-fixing the contribution of the petitioner.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition. Learned counsel for the respondents has stated that the petitioner has already paid

the contribution amount of Rs.2,36,481/- fixed by the authority and, therefore, nothing survives in the present Writ Petition to be adjudicated upon. Further, the learned counsel has stated that if the petitioner was aggrieved by the fixation of the contribution by the authority, he had a remedy under Section 45AA of the Act to prefer an appeal against the order of fixation, but, the petitioner has not availed the said remedy. Learned counsel has stated that the petitioner having paid the amount of contribution fixed by the authority cannot agitate the interest part which is levied under a mandatory provision under the Act and has to be necessarily complied with. That in so far as the notice, dated 06.02.2018, directing the petitioner to pay the contribution for the period 01.10.2015 to 31.12.2017 are concerned, the petitioner was given ample opportunity to appear before the authorities, but, the petitioner has failed to do so. That the petitioner has an option to file a dispute before the Employees Insurance Court constituted under Section 75 of the Act if he is aggrieved by the fixation of the contribution by the authority subject to limitation. The counsel has, therefore, prayed this Hon'ble Court to dismiss the present Writ Petition.

6. A perusal of the record reveals that the petitioner was initially put on notice by the authorities concerned to appear

before the authority for payment of contribution of Rs.3,94,144/- assessed for the period 01.09.2011 to 30.09.2015. The petitioner has appeared before the said authority through an authorized representative and produced the records. The authority duly taking into consideration the submissions made by the representative of the petitioner-school has reduced the amount of contribution payable by the petitioner from Rs.3,94,144/- to Rs.2,36,481/-. The said order was passed under Section 45A of the Act on 21.07.2017.

7. Admittedly, the petitioner has not challenged the said order and allowed it to become final and more over the petitioner has already paid that amount on 20.04.2018. The only bone of contention is the charging of interest on the original contribution amount of Rs.2,36,481/- and also the subsequent notice, dated 06.02.2018, for the period 01.10.2015 to 31.12.2017.

8. As per the provisions of the Act the authorities are obligated under the Act to charge interest on the delayed payments. In this particular case also the official authorities have issued the notice, dated 26.02.2018, directing the petitioner to pay amount of Rs.2,36,481/- along with interest of Rs.1,21,964/- up-to-the period 02.02.2018. If the petitioner had

any grievance with regard to the fixation of the contribution under Section 45A of the Act, he had a remedy of filing an appeal under Section 45AA of the Act and approaching the Employees Insurance Court under Section 75 of the act, but, he has not done so and allowed the order to become final. More over the petitioner having paid the original contribution amount fixed by the authority. That in so far as the notice, dated 06.02.2018 is concerned, it is only a show cause notice and the petitioner was directed to appear before the authority concerned for calculating the contribution. The counsel for the petitioner is unable to answer the query raised by this Court as to whether the petitioner has appeared before the authority or not subsequent to the said notice, dated 06.08.2018

9. Having regard to the above mentioned facts and circumstances, this Court does not find any infirmity with the orders passed by the authority concerned. However, in so far as the interest part is concerned the authorities have not mentioned the rate of interest at which they have charged. In case the petitioner is so advised he is free to challenge the levy of interest by filing an appeal under the provisions of the Act.

10. The Writ Petition is **disposed off** accordingly granting liberty to the petitioner to file an appeal against the

above order whereby the petitioner has been levied an interest amount of Rs.1,21,964/-.

(A. Abhishek Reddy , J)

Shamshad/-

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