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W.A. No. 1198 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

W.A. No. 1198 of 2021

1. The ESI Corporation Regional
Office (TN),
represented by its Regional Director,
Panchdeep Bhavan, 143,
Sterling Road Chennai – 600 034.

2. The Deputy Director,
ESI Corporation,
(Sub Regional Office)
No.1897, Trichy Road,
Panchdeep Bhavan,
Ramanathapuram,
Coimbatore – 641 045.

..Appellants

Vs.

M/s. G.S.R. Matriculation Higher Secondary
School, rep. By its
Principal R. Visalakshi,
Palamalai Road,
Kamatchipuram, Perianayackenpalayam,
Coimbatore – 641 020.

..Respondent



W.A. No. 1198 of 2021

Prayer: Writ Appeal as against the order dated 15.12.2020 passed in

W.P. No. 18774 of 2020.

For Appellants :: Mr.G. Bharadwaj

For Respondent :: Mr.R. Jayaprakash

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present appeal has been preferred by the ESI Corportion challenging the order of the learned Single Judge remitting the matter to the ESI Authorities to look into the benefit that may be extended to the respondent institution in terms of Section 91C read with Rule 53 of Employee's State Insurance Act, 1948 (hereinafter referred to as 'ESI Act' in short).

2. The respondent institution is a recognized private unaided matriculation higher secondary school, which was brought under the purview of the provisions of ESI Act consequent to the notification issued



W.A. No. 1198 of 2021

by the State Government in the year 2010 having been upheld by a Full Bench of this Court by its judgment in ***"All India Private Educational Institutions Association represented by its General Secretary V. State of Tamil Nadu represented by Principal Secretary to Government, Labour and Employment Department, Chennai – 9 and others"*** reported in **2020 (5) CTC 93**. While upholding the notification, the Full Bench had also held that the notices already given by the ESI authorities to various educational institutions can be pursued. Based on the said direction, the ESI authorities had passed a determination order dated 19.10.2020 in respect of the petitioner institution also under Section 45A of ESI Act. As the said order was passed ex parte, the respondent institution had challenged the same by way of writ petition.

3. The learned Single Judge, after considering the submissions made by either parties and following the order dated 29.10.2020 passed in W.P. No. 15405 of 2020 involving a similar issue, remitted the matter back to the ESI authorities for reconsideration and the relevant portion of the order passed by the learned Single Judge reads thus:



WEB COPY



W.A. No. 1198 of 2021

"16. That the matter is remitted back to the respondent ESI Authorities for reconsideration where a notice can be given by the ESI authorities to the petitioner institution to appear and put forth their case. On receipt of such notice, the petitioner school shall appear the ESI authorities and put forth their case and they can also raise the grounds urged in this writ petition in the context of the order passed by the Fee Determination Committee as well as the directives issued by the Full Bench to consider their case in view of the COVID-19 pandemic situation especially in the context of Section 91C read with Rule 53.

17. On consideration of the same, by taking into account the observations made in the aforesaid judgment dated 29.10.2020, the respondent ESI authorities shall consider all aspects and pass suitable orders within a period of two months from the date of hearing. Till such time, the impugned order shall be kept in abeyance. Despite this order, on the date of hearing as per the notice to be served on the petitioner by the ESI authorities, if the petitioner institution does not appear, it is open to the ESI authorities to proceed in accordance with law."

Challenging the same, the ESI Corporation is before this Court in this intra-court appeal.



W.A. No. 1198 of 2021

WEB COPY

4. On behalf of the Corporation, apart from other grounds raised, it is contended that the respondent institution has not exhausted the alternative remedy under Section 75(1)(g) of the ESI Act before the ESI Court to question the order passed by the Corporation under Section 45A of ESI Act.

5. According to the respondent educational institution, though demand made by the ESI Corporation itself is valid and the ESI Act is applicable to the respondent institution, they have sufficient documents in support of their case, that they may be permitted to go before the Original Authority and submit their case instead of filing an inter-departmental appeal.

6. Heard the learned counsel on either side.



W.A. No. 1198 of 2021

7. A reading of Section 45AA of ESI Act would make it very clear that the time prescribed for preferring an appeal as against the order passed under Section 45A of ESI Act is 60 days and the condition precedent is to deposit 25% of the amount determined by the authorities. By-passing Section 45AA, the affected party can approach the ESI Court under Section 75 of the ESI Act and Section 75(g) gives wider powers to ESI Court to take up any matter, adjudicate the same and pass final orders. That apart, the order of the Full Bench insofar as paragraph Nos 131 to 133 are concerned, the Hon'ble Apex Court has stayed the operation of directions issued therein vide its order dated 06.12.2021 in Special Leave to Appeal (C) Nos. 19410 to 19431 of 2021 and according to the ESI Corporation, the order is still in force.

8. Since the impugned determination order is dated 19.10.2020 and the time limit prescribed under the ESI Act is 3 years for the aggrieved party to approach the ESI Court, by-passing Section 45AA of the Act, we direct the respondent educational institution to approach the ESI Court within the time prescribed under the ESI Act and seek redressal of their



W.A. No. 1198 of 2021

grievance. In case, any waiver application is filed, it is open to the ESI Court to consider the same and take a decision within a period of one month from the date of receipt of such application for waiver.

9. The writ appeal is disposed of accordingly. No costs.

(S.V.N.J.) (R.K.M.J.)
14.02.2023

nv

To

1. The ESI Corporation Regional Office (TN),
represented by its Regional Director,
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WEB COPY



W.A. No. 1198 of 2021

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