



W.P.No.6715 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6715 of 2023
and W.M.P.Nos.6772, 6774, 6777 of 2023

Fatima Nursery & Primary School,
Rep. by its Correspondent,
47/22, Lazarus Church Road,
R.A Puram, Chennai – 600 028.

... Petitioner

Vs.

- 1.E.S.I. - Regional Corporation (Tamil Nadu),
Rep. by its Regional Director,
143, Sterling Road, Chennai - 600 034.
- 2.E.S.I. - Regional Corporation (Tamil Nadu),
Rep. by its Deputy Director,
143, Sterling Road, Chennai - 600 034.
- 3.Recovery officer,
E.S.I. Regional Corporation (TamilNadu)
Panchdeep Bhawan,
143, Sterling Road, Chennai - 600 034.
- 4.The Chief Manager,
Tamil Nadu State Apex Cooperative Bank Ltd.,
Santhome Branch,
No.44, Santhome High Road,
Chennai – 04.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned order of recovery dated 25.11.2022 in No.TN/Ins.VIII/51-00-092425-000-1301/C18ADH/451/6-12, in No.TN/Ins.VIII/51-00-092425-000-1301/C18ADH/452/6-12, in No.TN/Ins.VIII/51-00-092425-000-1301/C18ADH/265/21 on the file of 2nd respondent and the consequential Attachment Notice dated 06.01.2023 in No.TN/RECY/45G/51-51000924250001301/CCR-110973-112870 on the file of the 3rd respondent and quash the same, directing the respondents to waiver the levy of interest, as there is no willful default on the part of the petitioner

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

For Respondents : Mr.G. Bhardhwaj [R1 to R3]

ORDER

Heard Mr.Father Xavier Arul Raj, learned senior counsel appearing for the petitioner and Mr.G. Bhardhwaj, learned counsel for the respondents 1 to 3. There is no appearance on behalf of the fourth respondent.



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2. The learned senior counsel appearing for the petitioner submitted that in view of the interim orders, the interest came to be levied in view of the delay on the part of the Schools, in making the contribution and such delay was due to the interim orders of stay granted by this Court when the batch of Writ Petitions questioning the coverage under ESI, was pending. In this background, the learned senior counsel submitted that they are willing to pay the interest under the impugned order in installments. He would further submit that the period for which the interest is now been levied, is disputed by them. According to them, the interest ought to have been calculated for the contribution made between 12/10 to 3/15 alone.

3. This Court is of the view that such factual disputes cannot be adjudicated in the Writ Petition under Article 226 of the Constitution of India. Nevertheless, if the petitioner is granted liberty to file the appeal under Section 75 of the Employees State Insurance Act, the ends of justice will be secured.



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4. At this juncture, the learned senior counsel submitted that they are unable to pay the salaries of the teachers and other regarding expenses since the Bank accounts have been frozen by the respondents.

5. In this background, there shall be a direction to the petitioner herein, to pay 25% of the amount claimed in the impugned attachment notice dated 06.01.2023, on or before 06.04.2023. On producing a receipt to the satisfaction of the fourth respondent/Bank, the fourth respondent/Bank shall de-freeze the petitioner's bank account Nos.SB:227022675, SB:725839758, CC:722200668 and CC:722200680, forthwith and permit the petitioners to operate the accounts. Consequently, the petitioner is directed to file an appeal under Section 75 of the ESI Act, within a period of three (3) months from the date of receipt of a copy of this order.

6. With the above directions, the Writ Petition stands disposed of. Connected miscellaneous petitions are closed.

07.03.2023

Speaking/Non-speaking Order

Index: Yes/No

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M.S.RAMESH, J.

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