



W.P.No.1616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.1616 of 2023
and WMP No.1726 of 2023

M/s.Cluny Matriculation Higher Secondary School,
Rep. By its Correspondent,
M.Jacintha
No.5, Kamatchi Ammamal Road,
Salem 636 007

...Petitioner

Vs.

The Employees State Insurance Corporation,
Rep. By its Deputy Director (i/c)
Sub-Regional Office (salem),
No.39/57, Theerthamalai Vaniga Valagam
Three Road, Salem 636 009

...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorari to call for the records of the respondent in Ref.No.63000739520001302/Ins.II/SRO/SLM/759/19 dated 09.06.2021 and quash the same and remand the matter for reassessment.

For Petitioner : Mr.R.Manoharan

For Respondents : Mrs.S.Jayakumari
Standing Counsel

ORDER

This writ petition has been filed challenging the



W.P.No.1616 of 2023

proceedings of the respondent in

Ref.No.63000739520001302/Ins.II/SRO/SLM/759/19 dated 09.06.2021, wherein the petitioner has been directed to pay a sum of Rs.38,53,229/- towards the contribution payable by the petitioner under the Employees State Insurance Act, 1948.

2. Heard Mr.R.Manoharan, learned counsel for the petitioner and Mrs.S.Jayakumari, learned Standing Counsel for respondent.

3. The main ground that has been taken in the present writ petition while challenging the impugned order passed by the respondent is that the respondent determined the contribution on the assumed notional charges payable to the employees even without ascertaining whether the employees were actually working with the establishment. The other ground that has been raised by the learned counsel for the petitioner is that the identification of the beneficiaries is the primary responsibility of the respondent corporation and the quantification of the dues without identifying the beneficiaries is



W.P.No.1616 of 2023

unsustainable. To substantiate the same, the judgement of the Apex Court in CA No.5717 of 2001 and CA No.5718 of 2001 dated 03.04.2008 was brought to the notice of this Court. By relying upon this order, the learned counsel submitted that quantification of the dues without identifying the beneficiaries is unsustainable and if ultimately, the beneficiaries are not able to be identified, the ESI corporation will be retaining the amount without any purpose and that will go against the very object of the ESI Act.

4. In the considered view of this Court, before going into the merits of the case, it is seen that the petitioner has an efficacious alternative remedy by way of an appeal before the ESI Tribunal under Section 45AA of the ESI Act. The said appeal has to be filed within the time prescribed under Regulation 31-D by depositing 25% amount of the contribution fixed. Admittedly, this remedy has not been availed by the petitioner. That apart, the impugned order was passed by the respondent in the year 2021 and the petitioner has not chosen to question the same till now. Hence, there is also laches on the part of the petitioner in approaching this Court.



W.P.No.1616 of 2023

WEB COPY 5.

In view of the above, both on the ground of laches and on the ground that the petitioner has an efficacious alternative remedy before the ESI Tribunal, this Court is not inclined to entertain this writ petition and accordingly, this writ petition stands dismissed. Liberty is given to the petitioner to workout his remedy in accordance with law, if so advised. The Tribunal shall entertain the appeal filed by the petitioner subject to the condition the petitioner deposits 50% of the amount of contribution fixed by the respondent within a period of two weeks from the date of receipt of the copy of this order.

6. The Registry is directed to return back the original impugned order to the learned counsel for the petitioner after retaining a copy of the same to enable the petitioner to work out his remedy before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2023

rka

Index:Yes/No

Internet:Yes/No



W.P.No.1616 of 2023

To

WEB COPY

The Employees State Insurance Corporation,
Rep. By its Deputy Director (i/c)
Sub-Regional Office (salem),
No.39/57, Theerthamalai Vaniga Valagam
Three Road, Salem 636 009



WEB COPY



W.P.No.1616 of 2023

N.ANAND VENKATESH, J.,

rka

W.P.No.1616 of 2023

23.01.2023