



WEB COPY

W.P.No.10243 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.10243 of 2015

M.Nallasamy,
Proprietor of M/s.Keerthana Creations (56-064762-16),
3, Nandavana Thottam,
Mission Street,
Tirupur - 641 604.

...

Petitioner

versus

1.The Director,
ESI Corporation,
Sub-Regional Office,
Trichy Road,
Coimbatore - 641 045.

2.The Deputy Director,
ESI Corporation,
Trichy Road,
Coimbatore - 641 045.

3.The Recovery Officer,
ESI Corporation,
Trichy Road,
Coimbatore - 641 045.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, calling for the records



of the second respondent herein in No.56/T/11/15op 39/2007-Legal, dated 27.01.2015 and quash the same and consequently direct the second respondent herein to consider the petitioner's application for Amnesty on merits.

For Petitioner : M/s.G.Karthikeyan

For Respondents : Mr.SP.Srinivasan

ORDER

The Writ Petition has been filed challenging the order of the second respondent dated 27.01.2015 rejecting the request of the petitioner to bring him under the new Amnesty Scheme, 2014.

2. Heard M/s.G.Karthikeyan, learned counsel for the petitioner and Mr.SP.Srinivasan, learned counsel for the respondents and perused the materials available on record.

3. M/s.G.Karthikeyan, learned counsel for the petitioner submitted that as per the terms of the new Amnesty Scheme, 2014 in respect of closed units, the following conditions have to be fulfilled:-



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“Unit is closed for more than 5 years as on 31st December 2013

Case is pending for more than 5 years as on 31st December 2013

No assessment has been made for the period under dispute and litigation period upto the date of commencement of Amnesty Scheme 2014.”

4. According to the learned counsel for the petitioner, the petitioner’s unit has been closed even in the year 2006 and all of the conditions in respect of the closed units will be applicable to him and hence, it is wrong on the part of the second respondent to reject the request of the petitioner.

5. Mr.SP.Srinivasan, learned counsel for the respondents submitted that if the employer has disputed the determination or recovery of contribution in the Employees’ State Insurance Court under Section 75 of ESI Act and appeal under Section 82 upto 31st December 2013, the scheme shall be applicable only subject to certain conditions. The conditions laid down in the scheme as against those employers, who disputed the



determination or recovery of contribution by way of preferring the original petition before the ESI Court is shown as under:-

“i.The employer shall file a petition before the court where he has raised the dispute and seek permission of Hon'ble Court for out of settlement of matter under litigation. If court allows, then the matter shall be settled as per this Scheme The employer/IP shall apply for the scheme in the enclosed proforma of Annexure 'A'.

ii.The employer shall pay both the Employees' and Employers' share of contribution in full as per their records, which he shall produce before the assessing officers if the contribution has been assessed on assumed wages and he shall comply with other provisions of the Act.

iii.In case the relevant records are not available with the employer, they shall produce alternative records such as Income Tax Record etc. and shall pay the contribution accordingly as per that record.

iv.However, if the employer is not able to produce any records and the assessment has been made in respect of wages other than the wages shown in Regulation 32 Register, he shall pay the contribution which shall not be less than 30% of the assessed amount of contribution. The cases where assessment has already been made as per Hqrs instruction No.P-11/13/97-



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Ins-IV dated 26.5.2003 or where the contribution has been assessed on actual bases will not fall under the purview of this Scheme.

v.The employer pays the Interest in full.

vi.No damages shall be levied.

vii.The employer shall also furnish an undertaking to the Corporation to the effect that he/she shall be regular in compliance in the provisions of ESI Act in future or else he/she shall forfeit the right to avail of such amnesty scheme.”

6. It is the contention of the learned counsel for the respondents that the petitioner did not fulfill the condition no.2(iv) of the new Amnesty Scheme, 2014 and hence, the second respondent has rightly rejected his request.

7. The learned counsel for the petitioner contended that the petitioner challenges the very assessment made under Section 45-A of the ESI Act, 1948 and the impugned order in this regard made on 04.07.2005, is put to challenge by way of preferring a writ petition.



8. It is learnt that the above writ petition has been disposed by directing the petitioner to approach the ESI Court and thereafter, he has preferred an ESIOP in E.S.I.O.P.No.39 of 2007. The above fact cannot be disputed. Now, the petitioner has claimed that after complying Section 45-A assessment, the question of complying the conditions as contemplated under the regulation 2(iv) of the scheme would be applicable to the case. It is the presumption of the petitioner that Section 45-A assessment has not been done. So far as the second respondent is concerned, the said process is over and only because of that the second respondent has challenged the same by way of preferring an appeal.

9. Since the petitioner has filed ESIOP on 16.10.2007 itself, he comes under the ambit of the above date. However, he is expected to follow certain conditions. So regulation 2(iv) of the New Amnesty Scheme would prescribe a conditional payment of 30% of the assessed amount of contribution, that means even if the petitioner challenges the determination of the amount already made he is bound to deposit atleast 30% of the amount in order to make him eligible to come under the scheme.



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10. Since the petitioner did not utilise the opportunity by accepting atleast 30% of the assessed contribution and fulfilled the condition, the second respondent authority is right in rejecting his claim to be brought under the Amnesty Scheme. The petitioner was advised to withdraw ESIOP only in order to enable him to bring his case under the Amnesty Scheme. Since the second respondent authority has rejected his request to place him under the Amnesty Scheme, he should have been allowed to contest his ESIOP, which was imposed as a condition for making a representation for getting the benefit of the Amnesty Scheme.

11. Since the petitioner did not get the benefit of the scheme, he was found to be ineligible at the threshold itself, the ESIOP which had already withdrawn has to be restored without any doubt. Hence, the petitioner is at liberty to file an application before the appropriate authority to get it restored and see that it is disposed on its own merits. On receipt of such application, the Principal Labour Court, Coimbatore, is directed to pass orders to restore the ESIOP No.39 of 2007 and dispose the same on merits after giving the parties concerned an opportunity for hearing.



12. With the above observations, this Writ Petition is **disposed**. No costs.

20.09.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

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- 1.The District Collector,
Chennai District,
No.62, Rajaji Salai,
Chennai - 600 001.
- 2.The Tahsildhar.
Office of Tahsildhar,
Mylapore Taluk,
Chennai - 600 028.
- 3.The Deputy Commissioner of Labour,
Office of the Joint Commissioner of Labour I,
D.M.S. Compound,
Teynampet,
Chennai - 600 006.



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R.N.MANJULA, J.

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