



WEB COPY



W.P.Nos.4383 and 4386 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

W.P.Nos.4383 and 4386 of 2021
and W.M.P.Nos.4969 and 4972 of 2021

ABC Matric Higher Secondary School,
rep by its Secretary,
Avarampalayam,
Peelamedu,
Coimbatore 641 004

... Petitioner in both W.Ps.

Vs

1. Deputy Director (Ins.IV),
Employees State Insurance Corporation,
1897, Tricy Road,
Panchdeep Bhavan,
Ramanathapuram,
Coimbatore 641 045

...1st respondent in W.P.No.4383 of 2021
...sole respondent in W.P.No.4386 of 2021

2. The Recovery Officer,
Employees State Insurance Corporation,
1897, Trichy Road,
Panchdeep Bhavan,
Ramanathapuram,
Coimbatore 641 045

...2nd respondent in W.P.No.4383 of 2021



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Prayer in W.P.No.4383 of 2021: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Ceriorarified Mandamus calling for the records of the 2nd respondent dated 09.02.2021 in proceedings No.56001108040001302/CP/408099/CR-51413 and quash the same and further direct the 1st respondent to provide details of the claim for interest.

Prayer in W.P.No.4386 of 2021: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Ceriorarified Mandamus calling for the records of the respondent dated 19.01.2021 in proceedings No.56001108040001302/Ins.IV/Cbe and quash the same and direct the respondent to waive the amount demanded by way of damages in the light of Full Bench judgment of this Court reported in 2020(5)CTC 93 and in terms of Section 91C of the ESI Act, 1948.

For Petitioner : Mr.Anand Gopalan
in both W.Ps

For Respondents : Mr.T.N.C.Kaushik
in both W.Ps

COMMON ORDER



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These writ petitions have been filed challenging the order of the respondent dated 19.01.2021 in W.P.No.4386 of 2021 and consequential proceedings of the second respondent in W.P.No.4383 of 2021, dated 09.02.2021.

2. The petitioner-School has filed an application under Section 91-C of Employees' State Insurance Act for claiming a waiver of the damages assessed against them by citing the directions issued by the Full Bench of this Court reported in **2020 (5) CTC 93** [All India Private Educational Institutions Vs State of Tamil Nadu].

3. The reason for rejecting the petitioner's representation before the 1st respondent/ Deputy Director (Ins.IV), Employees State Insurance Corporation, is that the petitioner/School is not one of the associations which had challenged the inclusion of such institution under the purview of the ESI Act.

4. The learned counsel for the petitioner would submit that



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the order of the Full Bench of this Court made in the above case, cannot be construed as a judgment-in-personam and it is right-in-rem which is available to all similar educational institutions. There is no disagreement on the point that the petitioner-institution is also an educational institution. While passing the order, the Full Bench, took into consideration of the Covid pandemic and the Full Bench had given directions to the authority concerned to consider the unusual circumstances in which the educational institutions have been placed during Covid pandemic and to sympathetically consider the request for waiver of damages.

5. Since the petitioner is an educational institution, the petitioner-School is also entitled to the benefits of the order passed by the Hon'ble Full Bench of this Court, but however, the learned counsel for the respondents submitted that the above order of the Full Bench made in W.P.No.34236 of 2019 etc. batch, had been challenged by filing S.L.P.No.19410-19431 of 2021 before the Honourable Supreme Court and hence, the petitioner/School cannot take recourse basing on



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the Full Bench order. Even in that case, the respondents could state that the entitlement of the petitioner therein will depend upon the outcome of the said SLP and not by challenging the notification before the Writ Court.

6. In view the above, the matter is remitted back to the file of the respondents, to hear the matter afresh and pass orders on merits and in accordance with law, after the SLP is disposed of. Till such time, no recovery proceedings shall be initiated. There shall be no order as to costs. Accordingly, these writ petitions stand disposed of. Consequently, connected miscellaneous petitions are closed.

26.09.2024

Index:Yes/No
Speaking Order: Yes
srn

R.N.MANJULA, J.

srn



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To

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