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W.A.No.240 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A.No.240 of 2024
and
C.M.P.No.1451 of 2024

1. The Regional Director,
ESI Corporation,
Regional Office,
143, Sterling Road,
Chennai 34.

2. The Recovery Officer,
ESI Corporation,
Regional Office,
143, Sterling Road,
Chennai 34.

... Appellants

Vs.

1. Food Corporation Of India,
Zone Office, 2 Haddows Road,
Chennai 6.
Rep. by its Executive Director (South).

2. The Branch Manager,
State Bank of India,
Meenambakkam Branch,
Chennai.



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3. The North Coimbatore Food
Corporation Of India Workers,
Labour Contract Co-Op. Society Ltd.,
Rep. by its Special Officer,
Tatabad, Coimbatore-12

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed in WP.No.18820 of 2013 dated 01.06.2023 and uphold the 2nd Appellants proceedings No.56/63523/RRC/13 dated 12.02.2023 and consequential proceedings as legally justified and thus render justice.

For Appellants : Mr.S.P.Srinivasan

For Respondents : Mr.K.Elumalai for
C.K.Chandrasekar (for R1)

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The writ appeal has been filed against the order passed in WP.No.18820 of 2013 dated 01.06.2023.

2. The first and second respondents in the writ petition are the appellants before us. The first respondent Food Corporation of India instituted a writ proceedings, challenging the recovery order dated 12.02.2013.



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3. The writ petition was disposed of with a liberty to the first respondent, Food Corporation of India, to approach the appellate authority under the ESI Act, 1948. Aggrieved by the said order, the ESI Corporation preferred the present appeal, mainly on the ground that there is no appeal contemplated under the ESI Act, against the order of recovery passed by the Regional Director, ESI Corporation. In the absence of any such provision, the first respondent cannot prefer an appeal against the order of recovery.

4. As rightly pointed out by the appellant, an order passed under Section 45A of the Act is appealable under Section 45AA before the appellate authority. However, the recovery order is not appealable under Section 45AA but the aggrieved person may approach the ESI (Employees' Insurance) Court under Section 75(1)(g) of the Act. Therefore, the Food Corporation of India may prefer a petition before the ESI Court for adjudication of issues.

5. The order of recovery which was under challenge in the writ proceedings, was issued in the year 2013. The writ petition was also filed



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in the year 2013 without any delay. However, the writ petition was pending for about 10 years before the High Court. Thus, we are inclined to condone the delay with reference to the period during which the writ petition was pending before the High Court. However, the delay, if any occurred beyond the pendency period of the writ petition, cannot be condoned by this Court.

6. As far as the recovery order is concerned, it is consequential and passed in the year 2013 which was under challenge in the writ petition. Thus, we are inclined to grant liberty to the first respondent Food Corporation of India, to challenge the recovery order passed in the year 2013, taking note of the fact that the writ petition was pending before this Court from 2013-2022. The delay condoned in the present order would not mean that the delay occurred, if any, on earlier occasion, with reference to any other order, including an order under Section 45A of the ESI Act.

7. In the event of filing of any petition by the Food Corporation of India before the ESI Court, the same is directed to be disposed of as expeditiously as possible, on merits and in accordance with law.



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8. Accordingly, the order dated 1.06.2023, passed in W.P.No.18820 of 2013 is set aside and the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(K.R.S.J.,)

12.02.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

(sha)

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