



WEB COPY



W.P.No.30547 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.30547 of 2024 and W.M.P. Nos.33159 & 33160 of 2024

M/s.Prompt Agencies,
represented by its Proprietrix
J.Sabeena

... Petitioner

Vs.

1.The Deputy Director,
ESI Corporation,
143, Sterling Road,
Nungambakkam, Chennai - 34.

2.The Recovery Officer,
ESI Corporation,
143, Sterling Road,
Nungambakkam, Chennai - 34.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent to quash the order U/s.45A No.TN/Ins.IV/51000751150001001/C-18(ad)/4/04/02-18 dated 05.02.2018 for Rs.36,10,590/- for the period April 1998 to March 2003 and another 45A order No.TN/Ins.IV/51000751150001001/C-18(ad)/4/04/508/4-04 dated 05.02.2018 for Rs.4,69,869/- for the same period April 1998 to March 2003.



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For Petitioner : Mr.G.Babu Rajendran

For Respondents : Mr.G.Bhardwaj,
Standing Counsel

ORDER

The petitioner has filed this writ petition, challenging the orders of the first respondent recovering Notices under Section 45A of the ESI Act, both dated 05.02.2018.

2.The learned counsel for the petitioner submitted that on an Appeal preferred by the petitioner, the petitioner has filed C.M.A.SR.No.29795 of 2018 challenging the order of the Employees Insurance Court dated 25.08.2015 made in E.I.O.P. No.229 of 2004 through which the Employees Insurance Court has set aside the order dated 26.05.2004 made under Section 45A of the Employees State Insurance Act, 1948 and remanded the matter back to the original authority. Even before the above C.M.A. is taken up on file, the order dated 04.03.2019 made in C.M.P. No.13219 of 2018 in C.M.A.SR.No.29795 of 2018 has been dismissed by the learned Single Judge of this Court.



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3.Now the contention of the learned counsel for the petitioner is that the respondents ought to have challenged the order passed by the Employees Insurance Court, which has set aside the order passed by the respondents and remanded the matter back to the respondents in E.I.O.P. No.229 of 2004, but they should not have issued the order of recovery based on the determination of dues made under Section 45A of the ESI Act through the orders dated 05.02.2018.

4.The petitioner, who is an Establishment, has not chosen to file any Appeal challenging the order passed under Section 45A of the ESI Act by invoking appropriate statutory provision. Having not chosen to invoke the statutory remedy, the petitioner has filed this writ petition by wrongly invoking Article 226 of the Constitution of India before this Court knowing pretty well that appropriate remedy would have been only the statutory remedy, but just to drag the proceedings as an after thought. In fact, in the order dated 04.03.2019 made in C.M.P. No.13219 of 2018 in C.M.A.SR.No.29795 of 2018, both the impugned orders dated 05.02.2018 are not the matters in issue.



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5.In view of the above observation, this Writ Petition is dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

17.10.2024

Index: Yes / No

Speaking order / Non-speaking order

vga

To

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