



C.M.A.(MD)No.1497 of 2012

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Dated: 29.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1497 of 2012

and

M.P(MD) No.1 of 2012

S.R.S. Pingalay

... Appellant/ Petitioner

Vs.

Employees State Insurance Corporation
Rep. by its Deputy Director (INS-II)
Sherling Road,
Chennai- 600 034

..Respondent/ Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Act, 1948, to set aside the order and decree dated 05.07.2012 passed in E.S.I.O.P.No.115 of 2001 on the file of the Presiding Officer/District Judge, Labour Court, Tiruchirapalli by allowing this appeal.

For Appellant : Mr.N.C.Ashok Kumar

For Respondent : Mr.R.Ravikumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order and decree dated 05.07.2012 passed in E.S.I.O.P.No.115 of 2001 on the file of the Presiding Officer/District Judge, Labour Court, Tiruchirapalli, wherein the petitioner herein has filed original



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petition to set aside the order passed by the respondent dated 19.02.1999 and 08.03.1999.

2. The Labour Court has dismissed the petition. Aggrieved by the above said order the present appeal has been preferred by the petitioner/appellant.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the case before the Tribunal are as follows:

According to the petitioner he was running M/s.Gaiety Talkies at Trichy and the petitioner has received order passed by the respondent under Section 45 A of the ESI Act dated 19.02.1999 on 08.03.1999. The above said order was passed without any basis and the respondent has included the persons who were engaged by other Contractors i.e., cycle stand and canteen. Therefore the order passed by the respondent is liable to be set aside.

5. According to the respondent the petitioner establishment was covered under ESI Act and on the date of inspection more than



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20 persons were engaged in the employment and thereby the petitioner's establishment was covered under the ESI Act and contribution has to be paid as per the Act, thereby they issued proceedings under Section 45(A) of ESI Act. Already opportunity was given to the petitioner but they have not availed the opportunity dated 01.06.1987, thereby the petitioner has to pay a sum of Rs.30,346/- towards contribution for the period of 7/84 to 9/86.

6. In order to prove the case of the petitioner before the Labour Court, they have examined P.W.1 and marked documents Ex.P.1 to 18 and on the side of the respondent they have examined R.W.1 and marked documents Ex.R.1 to R6.

7. After hearing both sides and perusing the documents available on record, the Labour Court has dismissed the petition filed by the petitioner. Aggrieved by the above said order the present appeal has been filed on various grounds.

8. The learned counsel appearing for the appellant would contend that the petitioner was running M/s. Gaiety Talkies at Trichy and the petitioner has leased out the cycle stand and canteen. In the petitioner's talkies only seven persons are working and thereby the



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ESI Act will not apply but the respondent at the time of inspection included the persons who were working in the cycle stand and canteen and they have erroneously passed order under Section 45 of the ESI Act and fixed a sum of Rs.30,346/- towards contribution without any basis. Therefore the petitioner has filed original petition but the Tribunal has not considered the evidence adduced on the side of the petitioner and the Tribunal erroneously dismissed the petition. Therefore the order of the Labour Court is liable to be dismissed.

9. The learned counsel appearing for the respondent would contend that the petitioner's establishment was running M/s. Gaiety Talkies at Trichy and at the time of inspection more than 20 persons were employed but the petitioner's institution has not paid the ESI contribution and thereby they calculated the amount and issued notice under Section 45-A of the Act and the same was challenged before the Labour Court and the Labour Court after taking into consideration all the aspects correctly dismissed the petition, thereby the appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Labour Court the point for



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determination in this appeal is:

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i) whether the appeal is liable to be allowed or not?

11. In this case it is an admitted fact the petitioner establishment was running M/s. Gaiety Talkies at Trichy and the respondent inspected the institution on 26.07.1984 and found that more than 20 persons were employed and thereby issued notice under Section 45(A) of the Act to pay the contribution for the period from 7/84 to 9/86. It is also admitted fact that the appellant received notice dated 03.04.1987. According to the petitioner personal hearing was not given but the respondent denied the same stating that the personal hearing was fixed on 01.06.1987 but the petitioner has not attended the personal hearing. In this context in order to prove the case, P.W.1 was examined and documents Ex.P.1 to Ex.P.18 were marked and also on the side of the respondent R.W. 1 was examined and documents Ex.R.1 to 6 were marked.

12. On careful perusal of the above said documents filed by the petitioner and the respondent mainly the inspection report clearly shows that more than 20 persons were working in the appellant establishment including canteen and cycle stand. However those



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documents filed by the petitioner are pertaining from the year 1992-1994. The notice issued under Section 45(A) of the ESI Act is in respect of 7/84 to 9/86. The appellant has not produced any documents to prove their contention for the period of 1984 to 1986. However the order under Section 45(A) of the ESI Act dated 19.02.1999 contribution for the period of 1984-1986 ie. after lapse of 13 years, there is no time limitation prescribed in the ESI Act. However the respondent has to pass order within reasonable time. In this context the learned counsel appearing for the petitioner relied on the following judgements:

i) ESI Corporation.vs. C.C.Santha kumar reported in (2007) 1 SCC 584

ii) The Regional Director, Employees State Insurance Corporation, 143 Sterling Road, Nungambakkam, Chennai- 600 034-vs. M/s.Ashanivas Social Welfare Centre in CMA No.1428 of 2011.

13. On careful perusal of the above said judgments, it is clear that the authority has to pass order within reasonable time. Though time has not been fixed by the statute, authorities have to pass orders within reasonable time. In this case order was passed after 13 years. More over according to the petitioner no opportunity was given to him, but the order passed by the respondent reveals that



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opportunity was given to the petitioner but he failed to appear for personal hearing. However no records produced to show that sufficient opportunity was given to the petitioner except the order of the respondent. Therefore in view of the above said judgements and considering the plea of the appellant that no opportunity was given to him to put forth his defence before the authorities, this court feels that, it is appropriate to set aside the order passed by the respondent and remit the case to the respondent for fresh consideration by giving opportunity to the petitioners.

14.In the result, the Civil Miscellaneous Appeal stands allowed and the order passed by the Presiding Officer/District Judge, Labour Court, Tiruchirapalli in E.S.I.O.P.No.115 of 2001 is set aside and the matter is remitted back for fresh consideration by giving reasonable opportunity to the petitioner. Consequently connected miscellaneous petition is closed.

29.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

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1. The Presiding Officer/District Judge, Labour Court, Tiruchirapalli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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