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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1852 of 2013

- 1.The Regional Director,
Employees State Insurance Corporation,
Chennai.
- 2.The Deputy Director Sub-Regional Office,
No.1/8, Old Post Office Street,
Thallakulam,
Madurai-2.
- 3.The Recovery Officer,
No.1/8, Old Post Office Street,
Thallakulam,
Madurai-2.
- 4.The Local Office Manager,
Employees State Insurance Corporation,
Nagercoil.

... Appellants

Vs.

Kumari Murasu,
Tamil Daily News Paper,
Industrial Estate,
Konam, Nagercoil,
represented through its
Proprietor S.

... Respondent



PRAYER: Civil Miscellaneous Appeal is filed under Section 82(2) of E.S.I. Act, 1948, to set aside the judgment and decree of the Labour Court, Tirunelveli passed in E.S.I.O.P.No.11 of 2003, dated 15.04.2010.

For Appellants : Mr.C.Karthick
For Respondent : Mr.K.P.Krishnadoss

JUDGEMENT

This civil miscellaneous appeal is filed by ESI Corporation to set aside the Judgment and Decree dated 15.04.2010 passed in E.S.I.O.P.No.11 of 2003 on the file of Labour Court, Tirunelveli.

2. According to appellants ESI Corporation, the respondent establishment is having more than 10 workers but the said unit was not registered under the ESI Act and also failed to pay contribution for a period from 10.07.1990 to 31.03.1992, 01.04.1992 to 31.12.1996, 01.01.1997 to 30.09.1999. As per the report, the date of registration of the respondent's unit is 12.07.1990. Further when the ESI Corporation officials visited the respondent's premises on 10.07.1990, 12.07.1990 and 17.07.1990, they found from the list of employees that 15 persons were employed by the establishment.



The list of employees is consisting of the names of the employees and the salary received by them. In such circumstances, the respondent establish is bound to pay the contribution.

3. However, the contention of the respondent establishment is that the officials of ESI Corporation had inspected the premises for 3 days i.e. on 10.07.1990, 12.07.1990 and 17.07.1990. Thereafter the respondent was granted an opportunity to put forth their case on 27.06.1990. However, subsequently, the appellants had not issued any orders or issued any communication, hence the respondent was under the impression that the file was closed by the appellants. But suddenly after the lapse of nearly 10 years, the appellants had issued a Form-C18, dated 12.04.2000 and had passed an order dated 14.05.2000 under section 45 of ESI Act directing the respondent establishment to pay the contribution to the tune of Rs.65,177/-. The appellants are not empowered to recover the said amount of Rs.65,177/- which is beyond 10 years and the same is hit by the principles of limitation.

4. After hearing the rival submissions this Court had given its anxious consideration. It is seen that after inspection on 10.07.1990, 12.07.1990 and 17.07.1990, the appellants ESI Corporation had granted an



opportunity to the establishment to appear and the establishment had appeared on 27.06.1990 and submitted their case. Thereafter the file was kept in cold storage, suddenly the officials had taken the file and had issued notice dated 12.04.2000 directing the establishment to appear. On 27.06.2000 the establishment had appeared and had submitted the had employed less than 10 persons only, but the ESI corporation had relied on the inspection report. Hence the establishment was granted one more opportunity to appear on 01.08.2000, but the establishment failed to appear. Hence without giving further opportunity the ESI Corporation had passed an order dated 14.05.2000 directing to pay the said amount. This Court is of the considered opinion that the ESI Corporation ought to have granted one more opportunity, therefore the order dated 14.05.2000 is violative of principles of natural justice.

5. The next contention is that according to the respondent, only two employees were employed by them, rest of them are family members. The Learned Counsel appearing for the respondent submitted that the respondent institution is a newspaper, published daily evening to cater the local needs of the public of Kanyakumari District. It is only a 'small scale unit' and run by proprietor and his family members. The content of the newspaper would be



prepared in one place and it will be given for printing which is situated in the industrial estate. Therefore, the respondent submitted that the persons who were engaged in the place of the respondent cannot be taken into account, because those persons are family members. If the person is employed for remuneration, then alone the said person can be taken into account. In the respondent place less than 10 persons are employed, further the unit is a 'small scale industry' for which the respondent had relied on the certificate issued by the competent authority.

6. After hearing the rival submissions, this Court is of the considered opinion, for the plea of 'family unit' the respondent has not produced any records to prove the same. Moreover, the respondent has not stated whether both the respondent premises and the printing unit premises are considered as single unit. If it is considered as single unit then the persons employed in both the places ought to be taken for calculating the number of persons. Therefore, the plea of the establishment cannot be considered.

7. The contention of the respondent establishment is that the ESI Corporation cannot pass order after the lapse of 10 years and have no power to collect contribution for a period of 10 years from 1990-1999 and had relied on



Section 48(A) of the ESI Act. In the said provision it is stated that no order shall be passed by the ESI Corporation in respect of period beyond 5 years from the date on which the contribution shall become payable. But the said amendment was implemented from 01.06.2010. Therefore, the said provision is not applicable for the contribution payable for the year 1990 since the said provision has come into effect from 01.06.2010.

8. It was brought to the notice of this Court that the establishment was closed during 1992. Based on the observation and reasons stated supra, this Court is of the considered opinion that the respondent is entitled for waiver of interest. Further the appellants cannot not collect the contribution for more than 10 years. Hence the contribution is restricted for a period of 5 years.

9. Therefore, the Appellants are directed to recover only 50% of Rs.65,177/-. The respondent shall pay the same within a period of 8 weeks, from the date of receipt of a copy of the order.



10. With these observations, this Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2024

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

1. The Labour Court, Tirunelveli.
2. The Proprietor,
Tamil Daily News Paper,
Industrial Estate,
Konam, Nagercoil,
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Order made in
C.M.A(MD)No.1852 of 2013

02.08.2024