BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	25/07/2024
Date of Pronounced	09/09/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)No.101 of 2021

1.Joint Director,
Employees State Insurance Corporation,
4th Main Road, K.K.Nagar,
Madurai-20.

2.The Assistant Director,
Employees State Insurance Corporation (SRO)
4th Main Road,
K.K.Nagar, Madudrai-20. : Appellants/Respondents

Vs.

Ramanathapuram District Sarvodaya Sangam,
66-67 Kanthadai Street,
Srivilliputhur,
Rep. by its Secretary : Respondent/Petitioner

PRAYER:-Civil Miscellaneous Appeal is filed under section 82(2) of the Employees State Insurance Act 1946, to call for the records relating to the fair order and Ex-order, dated 03/01/2020 passed by the ESI Judge, ESI Court (Labour Court) Madurai, in ESIOP No.15 of 2020 and to set aside the same.

For Appellants : Mr.N.Dilip Kumar

For Respondent : Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking an order to set aside the fair order and Ex-order, dated 03/01/2020 passed by the ESI Judge, ESI Court (Labour Court), Madurai, in ESIOP No.15 of 2020.

2.**The facts in brief:**-

The appellants Corporation herein issued a show cause notice to the respondent on 06/01/1989 in letter No.57-28581/92. Challenging the show cause notice, the respondent herein filed ESIOP No.3 of 1988 before the ESI Court namely the District Court, Ramnad. Simultaneously, the respondent moved the High Court as well as the Government for exempting the respondent herein to pay the contribution amount under section 87 of the ESI Act from 14/05/1978 onwards.

3.The High Court in the Writ Petition Nos.5521 to 5535, 5583 to 5597 and 5660 of 1990, by order, dated 03/05/1990 directed the State Government to consider the exemption request made by the respondent. The request was considered by the Government of Tamil Nadu in G.O.D1 No. 115, Labour and Employment Department, dated 06/08/1990, exempted the respondent herein from pay the contribution from 14/05/1978 to 31/02/1991.

4.The next ground of assessment was initiated by the 2nd appellant herein, by the impugned order in 57-28204-06/INS.1/SRO/MDU/354/09, dated 30/12/2009 claiming the contribution amount of Rs.6,73,858/- for the period between 01/04/1991 and 31/03/2009. Personal hearing was made. The respondent officials attended the personal hearing. In the meantime, the respondent moved WP(MD)No.2040 of 1994. By order, dated 12/10/2000. the High Court directed the Government to give opportunity to the respondent herein. In pursuance of the above said direction, they moved the Government, by letter, dated 19/06/2008. When the matter was under consideration of the Government, the impugned notice was issued. But without waiting for the Government Order and without verifying the records on the assessment wage structure, the appellants passed an order directing the respondent herein to pay contribution from April-1991 to March-2009 to the tune of Rs.6,73,858/-.

5.Challenging that assessment, the respondent herein moved ESI Court, Madurai by filing the present petition setting out the above facts and circumstances.

6.That was resisted by the appellants herein by filing counter.

7.The ESI court, Madurai observed that the respondent can claim contribution only from 01/02/2010 and not prior to that. By observing so, the order under section 45(A) of the ESI Act was quashed and injunction was granted not collecting the amount.

8.Against which, this Civil Miscellaneous Appeal is preferred by the Corporations.

9.Heard both sides.

10.For better understanding the grievance expressed by the respondent herein, we will extract the relevant portion of the judgment of the Hon'ble Supreme Court in ***Employees State Insurance Corporation & others Vs. Jardine Henderson Staff Association & others (CASE NO.Appeal (Civil)1726 of 2005).***

> *"In our opinion, the High Court was fully justified in passing the judicious order after considering the equities by directing the employer and the employees to make ESIC contribution for the future and should not bear with the liability for the past inasmuch as the employees of the respondents have not availed any medical facilities from*

> *ESIC and at the same time the employer was providing the medical facilities due to interim orders of the High Court. The order passed by the High Court, in our considered opinion, meets the ends of justice and does not require interference by this Court under Article 136 of the Constitution of India."*

11.Now based upon the observation of the Hon'ble Supreme Court, the respondent wants, since the medical facilities and other facilities were extended by the respondent to his employee, the order passed by the Labour Court namely the ESI Court need not be interfered with.

12.The learned counsel appearing for the respondent would further submit that in the writ petition, interim stay was passed by this court. It continued till the disposal of the writ petition. In the meantime, medical and other benefits were provided to the employees. So, they have complied the provisions of the ESI Act and heavy financial burden is cast due to the dismissal of with writ petition.

13.Only a short point arises for consideration.

14.Section 87 of the ESI Act reads as under:-

> "***87.Exemption of a factory or establishment or class of factories or establishments.****The appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time:*
>
> *Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act:*
>
> *Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application.*

15.Let Section 90 of the ESI Act may also extracted hereunder:-

> *“**90.Exemption of factories or establishments belonging to Government or any local authority.** ?The appropriate Government may, after consultation with the Corporation, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment belonging to any local authority from the operation of this Act, if the employees in any such factory or establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.”*

16.This is not the first time by which the respondent tries to get out of the compulsory contribution as detailed in the petition.

17.First attempt was made, challenging the letter, dated 06/01/1989. It was successful. The period covered in the above said notice was between 16/05/1978 to 31/03/1991. Based upon the direction issued by the writ Court, as detailed in the preamble portion, the Government considered the request of the respondent and exemption was granted as mentioned in the preamble portion.

18.Second attempt was made to prevent the appellants herein to take or initiate action for the subsequent period by filing WP(MD)No.2740 of 1994. As mentioned above, again, the High Court directed the Government to give opportunity to the respondent herein. In pursuance of the direction, again the respondent herein moved the Government, by letter, dated 19/06/2008. But the Government now thought it otherwise, refused to grant exemption, by order, dated 01/02/2010 in G.O(D)No.80, Labour and Employment (L1) Department. I need not elaborate the said Government Order, suffice to extract the following paragraphs.

> *"Rehabilitation allowance, Occupational Diseases, Vocational Rehabilitation Benefits provided by the Management.*

No such provisions were furnished by the management.

The Government consider that the management has not furnished any details on the above benefits for the employees. Therefore Employees' State Insurance Scheme is superior.”

19.The last para of the order reads that:-

“4.The Government have examined the benefits provided to the workers by the Employees' State Insurance Corporation and the Management. The Government decides that the benefits provided by the Employees' State Insurance Corporation are superior in nature and more beneficial to the employees than the benefits provided by the management of Ramanathapuram District Sarvodaya Sangam, Srivilliputhur, and hence not to grant exemption to the above management from the provision of Employees' State Insurance Act. Accordingly the Government rejected the request of the Special Officer, Ramanathapuram District Sarvodaya Sangam, Srivilliputhur, for grant of exemption for the period from 01.04.1991 to 31.03.2008 to the above Sangam from the

provisions of Employees' State Insurance Act, 1948."

20.so, this was challenged by the respondent herein by filing WP(MD)No.4867 of 2010. The writ Court has observed that exemption either under section 87 or 90 is not automatic. The persons, who claim exemption must establish that the benefits provided to the employees or either substantial similar of superior. This is the criteria for granting exemption. Finally, the writ court dismissed the writ petition stating that the order was passed by the Government only after proper application of mind. Since the respondents have not produced any document to show the substantial claim, they are not entitled for an exemption. But however, another opportunity was given to the respondent herein to improve the benefit it offers to the employees and again applied to the Government for registration. Further direction was issued to the Government, if it is made the Government may consider the same in accordance with law. That order was passed on 13/05/2007. As mentioned in the preamble portion, simultaneously the subject petition was filed before the Labour Curt. The Labour Court decided the matter on 03/01/2020.

21.Now the point narrows down to a simple issue as to whether any material is placed by the appellants herein before the Labour court to substantiate their claim.

22.As directed or suggested by the writ court, if they have improved the benefits offered to the employees, the exemption is lawful. Had it been the case of the respondent, the Labour court would have or could have chance to address that point. But the Labour Court exceeded its jurisdiction. Even without any basic documents and reasons, the Labour Court set aside the order stating that since the representation made by the respondent herein was pending before the Government for consideration. In the meantime, the writ court has also passed an order giving opportunity to the respondent again to approach the Government for exemption. The Government dismissed the representation made by the respondent herein.

23.When the Government itself has refused to grant exemption for the impugned period, the Labour Court has absolutely no jurisdiction to set aside the notice. More particularly, the writ court itself has dismissed the writ petition challenging the impugned G.O passed, dated

01/02/2010 The Labour Court ought to have directed the respondent herein to comply the directions issued by this court in WP(MD)No.4860 of 2010.

24.So, the impugned order passed by the Labour Court is *per se* illegal and beyond the jurisdiction not only on the ground of development during the pendency of the petition, but also on the ground that no material was placed by the respondent herein to prove that during the relevant period, benefits were offered to the employees either similar or better as provided under the provisions of the ESI Act. Without any proper reason, the above said order has been passed by the Labour Court.

25.In the light of the above said, I am not concentrating much upon the argument advanced on the side of the appellants herein in an extensive manner. The above said development is sufficient enough to set aside the award passed by the Labour Court.

26.Coming back to the judgments cited by the respondent herein, as extracted in the opening para, in that judgment, sufficient material was placed before the court for claiming exemption. Only on that account, the Division Bench of Calcutta High Court granted exemption to the Establishment towards the payment of contribution. But here, it is not the case as detailed earlier. So that judgment will not help the respondent herein.

27.In the result, this Civil Miscellaneous Appeal is **allowed**. The impugned order, dated 03/01/2020 passed I ESIOP No.15 of 2020 by the ESI Court (Labour Court), Madurai is set aside. No costs.

09/09/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The ESI Judge,
ESI Court (Labour Court),
Madurai.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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CMA(MD)No.101 of 2021

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