



C.M.A.(MD).No.1147 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

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The Employees State Insurance Corporation,
through its Regional Director,
having his office at
No.143, Sterling Road,
Madras.

... Appellant/1st Respondent

-VS-

1.Sundaravel Offset Printers,
through its Ocupier,
J.Madasamy,
S/o.Jeyamani Nadar,
No.69, ASK Thangaiah Nadar Road,
Sivakasi.

... 1st Respondent/Petitioner

2.The District Collector,
Kamarajar District,
Now Virudhunagar.

... 2ndRespondent / 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the E.S.I.Act, 1948, to set aside the decree and judgment of the ESI Court, (Labour Court, Madurai) passed in E.S.I.O.P.No.77 of 2001 dated 22.12.2011.

For Appellant : Mr.C.Karthik



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For R1 : Mr.C.Senthil Murugan
For R2 : Mr.N.Muthuvijayan
Special Government Pleader

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in E.S.I.O.P.No.77 of 2001 dated 22.12.2011, on the file of the ESI Court, (Labour Court, Madurai), wherein, the first respondent / petitioner herein has filed the E.S.I.O.P to set aside the order passed by the appellant under Section 45-A of the E.S.I Act.

2. The tribunal has set aside the order passed by the appellant dated 06.12.1990 and remitted the case to the appellant for disposal and further, directed the appellant to give an opportunity to the first respondent / petitioner vide the order dated 22.12.2011. As against the same, the present appeal has been filed by the appellant/E.S.I. Authorities.

3. According to the appellant, after giving sufficient opportunities to the first respondent / petitioner, an order was passed on 06.12.1990. In the



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order itself, the authorities stated that already, sufficient opportunities were given to the first respondent / petitioner. Even then, the first respondent / petitioner failed to avail that opportunities. But, the trial Court without considering the same, remanded the case for disposal by giving an opportunity to the first respondent / petitioner. Before the tribunal, the first respondent / petitioner has not examined any witness and failed to avail the opportunity to establish his case. However, the tribunal, after thought decided the case with the available records and erroneously remitted back the case to the ESI Authorities. Therefore, the order passed by the tribunal, is liable to be set aside.

4. According to the first respondent / petitioner, no opportunity has been given to the first respondent / petitioner and without hearing the first respondent / petitioner, the ESI Authorities, passed the impugned order. Thereby, they challenged the order before the ESI Court on the ground that no opportunity was given to the first respondent / petitioner. Accordingly, ESI Court remanded back the case to the ESI Authorities for disposal by offering opportunities to the first respondent / petitioner. Therefore, the present appeal is liable to be dismissed.



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5. This Court heard both sides and perused the materials available on record.

6. Upon hearing both sides and perusing the records, the following Substantial Question of Law are framed :-

1) Whether the Enquiry Officer given sufficient opportunities to the first respondent / petitioner before passing an order under Section 45-A of the E.S.I Act ?

2) Whether the case has been remitted back by the ESI Court on the ground that no opportunity was given to the respondent is correct or not?

7. Substantial Question of Law 1 & 2 :-

In this case, according to the appellant, sufficient opportunities were given to the first respondent / petitioner. However, the first respondent / petitioner has not availed that opportunities. The tribunal has erroneously remitted the case for disposal by giving opportunity to the the first respondent / petitioner. Therefore, the order is liable to be set aside. According to the the first respondent / petitioner, no opportunity was given to him. Therefore, the



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tribunal has given an opportunity to the first respondent / petitioner. In the order itself, the ESI authorities categorically stated that in the show cause notice, the employee was given opportunity for fresh hearing on 08.02.1986 and the employer replied through letter dated 14.02.1986 requesting for adjournment and the case was adjourned to 08.04.1986. On that date, the employer did not attend. Again, sent a letter dated 11.08.1986. Therefore, the order itself shows that the first respondent requested for adjournment and the same was given to the the first respondent / petitioner. But, he has not availed that opportunity. Therefore, the records shows that the Enquiry Officer had given sufficient opportunity to the first respondent / petitioner before passing an order under Section 45-A of ESI Act. But, the ESI Court without considering the above said aspect, remitted back the case to the ESI Authorities and directed them to give an opportunity to the first respondent / petitioner. Therefore, the order passed by the tribunal is unsustainable and the same is liable to be set aside. Thus, the substantial question of law 1 and 2 are answered.

8.In view of the above said discussion, this Court is of the opinion that the present appeal is liable to be allowed by setting aside the order passed by the ESI Court.



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9. In the result, this Civil Miscellaneous Appeal is allowed and the order passed by the ESI Court, (Labour Court, Madurai), in E.S.I.O.P.No.77 of 2001 dated 22.12.2011, is hereby set aside. The Labour Court is directed to hear the case on merit with available records and pass appropriate orders on merits by giving an opportunity to both sides. Considering the nature of the case, the Labour Court is directed to dispose the case within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

28.03.2024

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

1. The ESI Court, (Labour Court, Madurai)
2. The District Collector,
Kamarajar District,
Now Virudhunagar.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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