BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.15648 of 2018
and
W.M.P(MD)Nos.14047 to 14049 of 2018

Bharathi Vidyalaya Matriculation School,
Rep. by its Correspondent,
M.Nagarajan,
Thirugokarnam,
Pudukkottai District. ... Petitioner

Vs.

1.The Deputy Director (INS II),
Sub Regional Office,
Employee's State Insurance Corporation,
SRO-Madurai,
ESI Corporation, 2nd West Street,
K.K.Nagar,
Madurai District-625 020.

2.The Recovery Officer,
Office of the Recovery Officer,
Sub-Regional Office (Madurai),
Employees State Insurance Corporation,
2nd West Street, K.K.Nagar,
Madurai-20.

3.The Branch Managerc,
Indian Bank,
Rajagopalapuram Branch,
Plot No.268, Housing Unit Rajagopalapuram,
Pudukkottai-622 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in No.57000740080001302/3272018232/456/17/Ins III dated 27.03.2018 and the Impugned Order in No. 57000740080001302/3272018233/226/16/Ins-III dated 27.03.2018 on the file of the Respondent No.1 and the consequential impugned notice in Ref.No. 57000740080001302/CP/253073/1642/17 dated 29.03.2018 and the consequential impugned notice in Ref.No. 57000740080001302/CP/253063/1643/17 dated 29.03.2018 on the file of the Respondent No.2 and the impugned order in No. 57/RRC/00/074008/000/1302/SRO/MDU/18 dated 04.07.2018 on the file of the Respondent No.2 and the same as illegal.

For Petitioner : Mr.T.Aswin Rajasimman

For Respondents : No appearance

ORDER

Challenging the orders of the respondents 1 & 2, this Writ Petition is filed.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3. The question whether the private educational institutions would be covered by ESI Act was settled by the Hon'ble Full Bench in the decision reported in ***2020(5) CTC 93 FB (All India Private Educational Institutions Association Vs. State of Tamil Nadu)***. The Hon'ble Full Bench in Paragraph Nos.130 to 133 has observed as follows:-

> "130. This matter was heard and reserved for orders just before the preparations for lock down of the Country on account of COVID-19 pandemic were announced. Thus, in addition to whatever we have stated above on the merits of the issue referred to us, we are also of the view that the present economic conditions necessitate some leeway and negotiations in the matter of settlement of arrears due by the Educational Institutions.
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> 131. Section 91-C of the ESI Act comes to aid. Section 91-C provides for the writing off of loss and states as follows:
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> "91-C. Writing off of losses subject to the conditions as may be prescribed by the Central Government where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount.
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> 132. A provision is, thus, made for the Corporation to sanction the writing off of the contribution, interest and damages due to it if the Corporation is of the opinion that such amounts are irrecoverable from the Educational Institutions concerned. The pandemic has resulted in a situation where several Educational Institutions are reportedly unable to even pay regular salaries to their employees. The financial crunch faced by them, at this juncture, is a matter of public knowledge. The impugned notification no doubt mandates certain contributions to be made and we have upheld the validity of the same. The contributions to be made under the Notification enure to the coffers of the Corporation and it is not the Corporation's case that there are claims that have

been made by the employees of the Educational Institutions that remain unfulfilled on account of the failure of the Institutions to make the contributions in the first place. No prejudice has thus been caused to the employees per so for the periods till the date on account of such failure by the Educational Institutions.

133. We, thus, strongly recommend that the provisions of Section 91-C be applied in letter and spirit by the Corporation in considering the case for reduction/waiver of pending arrears, if and when made by the Educational Institutions. Such requests, if and when made, shall be considered by the Corporation in line with the object and spirit of Section 91-C, particularly in the light of the present economic conditions."

4. The learned counsel appearing for the petitioner would submit that the decision of the Hon'ble Full Bench is squarely applicable to the facts of the present case. He further submitted that the petitioner undertakes to pay the demand amount as mentioned in the impugned orders in monthly installments.

5. Accordingly, the writ petition is disposed of. The petitioner is directed to pay the demand amount, as mentioned in the impugned orders, in four equal monthly installments. No costs. Consequently, connected miscellaneous petitions are closed.

12.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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KRISHNAN RAMASAMY, J

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