



C.M.A(MD)No.470 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.470 of 2017

1.The Deputy Director,
Employees State Insurance Corporation,
Sub Regional Office,
Tallakulam,
Madurai-625 002.

2.The Recovery Officer,
ESI Corporation,
4th Main Road,
K.K.Nagar,
Madurai-625 020.

... Appellants

Vs.

R.Jayamanohar

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 (2) of ESI Act, 1948, to set aside the decree and judgment of the ESI Court, (Labour Court), Madurai passed in E.S.I.O.P.No.59 of 2005, dated 09.11.2016 and allowed the above Civil Miscellaneous Appeal.

For Appellants : Mr.I.Pinaygash

For Respondent : Mr.M.Sridher



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JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the ESI Corporation, challenging the order passed by the Labour Court, Madurai in E.S.I.O.P.No.59 of 2005.

2. The employer is an Indian Oil Corporation dealer located at Dindigul. The said premises was inspected by the ESI officials on 14.11.1996, 20.11.1996, 27.11.1996 and 12.12.1996. Based upon the inspection report, a notice under Form C-18 was issued on 03.06.2002, calling upon the employer to pay ESI contribution for the period covering 01.04.2001 to 30.09.2001. Since the explanation offered by employer was not satisfactory, proceedings were initiated and orders were passed on 27.07.2005 mulcting a liability of Rs.13,943/- for the said period. Challenging the same, the employer had filed E.S.I.O.P.No. 59 of 2005.

3. The Labour Court after considering the submissions made on either side has arrived at a finding that, the ESI Corporation had not established that the number of employees in the petroleum outlet had



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reached 10 or exceeded 10 on the relevant date. Based upon the said finding, the appeal was allowed by the Labour Court. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the ESI Corporation.

4. According to the learned Counsel appearing for the appellant herein, for a different period, another C.M.A(MD)No.597 of 2016 was filed by the ESI Corporation arising out of E.S.I.O.P.No.33 of 2001. This Court by an order, dated 05.12.2017 has set aside the order of the Labour Court and has remitted it back for the Labour Court to implead the workers and to arrive at a decision. Hence, he prayed for remitting this matter also to the Labour Court for impleading the concerned employees.

5. Per contra, the learned Counsel appearing for the respondent had contended that the ESI Corporation has not let in any evidence at all before the Labour Court and therefore, no further opportunity could be given to the ESI Corporation for let in any evidence.

6. I have carefully considered the submissions made on either side and perused the materials available on record.



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7. With regard to the same employer, for a different period, a similar order has been passed by the ESI Court, Madurai in E.S.I.O.P.No. 33 of 2001. The said order has been set aside by this Court in C.M.A(MD)No.597 of 2016 and the matter has been remitted back to the Labour Court for impleading the employees, who are beneficiaries of the Act and thereafter, proceed with the enquiry.

8. In view of the above said facts, this Court is of the considered opinion that, a similar order could be passed in the present appeal also. A perusal of the order in E.S.I.O.P.No.59 of 2005 also indicates that the concerned workers have not been examined. Therefore, the order passed by the ESI Court in E.S.I.O.P.No.59 of 2005 is hereby set aside. The matter is remitted back to the Labour Court. Liberty is granted to the ESI Corporation to implead the employees, who are beneficiaries under the Act and thereafter, proceed with the enquiry.

9. With the above said observation, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs.

17.04.2024



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The ESI Court, (Labour Court),
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
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