BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2024

CORAM :

THE HON'BLE MRS. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.A.(MD).No.1593 of 2024
and
C.M.P.(MD).No.12460 of 2024

Ramanathapuram District Sarvodya Sangam
66-67, Kanthadai Street,
Srivilliputhur, Virudhunagar District.
Through its Secretary,
J.Inbaraj ... Appellant

Vs.

1.The Principle Secretary to Government,
Labour and Employment Department,
Government of Tamilnadu,
Secretariat, Chennai-600009.

2.The Regional Director,
Employees State Insurance Corporation,
143, Sterling Road, Nungambakkam.

3.The Joint Director,
Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road, K.K.Nagar,
Madurai-20. ... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 15.03.2017, passed in W.P.(MD).No.4867 of 2010.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.M.Sarangan For R1
Additional Government Pleader

: Mr.R.Ravikumar For R2 & R3

JUDGMENT

[Order of the Court was made by **Mr.K.K.RAMAKRISHNAN, J.**]

The petitioner before the writ Court being the appellant, has filed this Letter Patent appeal under Section 15 of the Letter Patent Act, challenging the dismissal order passed by the writ Court.

2. The petitioner, the Sarvodya Sangam filed the petition under Section 87 of the Employee State Insurance Act 1948 to claim the exemption from the purview of the said Act. In the petition, the Sangam has claimed exemption on the ground that they have their own regulations and all the benefits stated in the said Employee State Insurance Act 1948 also form part of the said regulations and hence it seeks to claim exemption. However the same was rejected by the Government by passing the detailed

order, on conducting enquiry and after giving opportunity to the petitioner ie. the Sangam by order dated 01.02.2010 in G.O.(D).No.80. Challenging the same, the petitioner filed the writ petition before the writ Court.

3. The writ Court after considering the impugned order, also the relevant provision, the comparison benefit provided as per Sangam regulation and the requirement of Employee State Insurance Act 1948, concurred with the impugned order passed by the Government to reject the exemption. Challenging the same, this writ appeal was filed.

4. The learned counsel for the appellant submitted that by way of its own regulation, the Sangam provides all the benefits which is more beneficial to the Employees of the Sangam. The same is not properly considered by the Government and the writ Court also has not properly appreciated the said fact. It is submitted that all the benefits provided are much better than what is incorporated in the ESI Act. Hence, the Sangham seeks for interference in the writ order and quash the said G.O.Ms., passed by the Government.

5. The learned counsel, for the respondent, submitted that the Government passed the detailed order upon considering the relevant fact and also the essential benefits under the ESI Act which are not provided in the regulation of the petitioner Sangam. He also stated that many benefits are not provided in the regulation of Sangam as on date. Therefore, the Government properly considered and rejected the request of the petitioner's claim of exemption. The writ Court has also analyzed the said fact. This Court has no jurisdiction to interfere with the order of the Government when the Government has applied its mind and also considered the relevant fact in detailed manner. The Court has no jurisdiction to exercise appellate power under the said G.O.Ms. The writ Court also considered the said aspect and correctly dismissed the petition. Hence, he sought for dismissal of this writ appeal.

6. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

7. The petitioner sangam’s request to claim the exemption under Sections 87 and 90 of the ESI Act is elaborately considered by the

Government. It is a settled principle that exemption can be granted merely because the petitioner makes the claim to exempt the provision of the act, and such relief can be granted automatically. To claim the exemption, it is the duty of the appellant to prove the case if it comes under the exemption. In this case, the Government passed a detailed order considering every aspect and the writ Court also considered the said aspect. Hence, this Court finds no reason to interfere with the said finding of both the Government and the Writ Court.

8. Apart from that, as rightly pointed out by the learned counsel for the Government that the Government has considered in detail all the facts and it is relevant to extract the detailed consideration by the Government and the same is hereunder:

Sl. No	***Benefits***		***Eligibility Conditions***	***Duration and Scale of benefits***
	Sickness Benefit			
1	a	Sickness Benefit	Payment of Contribution for 78 days in corresponding contribution period of six months	Up to 91 days in two consecutive benefit periods at 20% more than the Standard Benefit Rate ie., just above 60% of the wages.
	b	Enhanced Sickness Benefit	Same as above	14 days for tubectomy & 7 days for vasectomy, extendable on medical advice. Rate of payment is 100% of the wages.

	c	Extended Sickness Benefit	For 34 specified long diseases. Continuous insurable employment for two years with 156 days contribution in four consecutive contribution periods	124 days which may be extended up to two years on medical advice during a period of three years in insurable employment Rate:70% of wages approx
2	Disablement Benefit			
	a	Temporary Disablement benefit	From day one of entering insurable employment & irrespective of having paid any contribution	As long as temporary disablement lasts. Rate: about 75% of wages approx
	b	Permanent Disablement Benefit	Same as above	For whole life. Rate: about 75% of wages depending upon loss of earning capacity
3	Dependants Benefit		From day one of entering insurable employment & irrespective of having paid any contribution in case of death due to employment injury	For life to the widow or until her remarriage. To legitimate dependant sons till the age of 25 years. To unmarried daughters and handicapped children, till marriage or disability losts. To dependant parents for life. Rate: about 75% of the wages approx, shareable in fixed proportion.
4	Maternity Benefit		Payment of contribution for 70 days in two preceding contribution periods. (one year) (for new entrants, in one or two contribution periods)	12 weeks in case of normal delivery 6 weeks in case of miscarriage. Extendable by 4 weeks on medical advice. Rate: Almost full wages.

5	Medical Benefit	Full medical facilities for self and dependants from day one of entering insurable employment. Super speciality treatments from reputed private hospitals are also available without any monetary ceiling.	Full medical care till disease or disablement lasts. No ceiling or upper limit on expenditure for individual cases. **Retired insured persons** who have been in insurable employment for at least five years before superannuation or VRS and disabled insured persons are entitled to full medical care for self and spouse only on payment of Rs.120/- as annual contribution.
	Confinement Expenses	An Insured Woman or an I.P., in respect of his wife in case of facilities for confinement are not available.	Up to two confinements only. Rate: Rs.2,500/- per case. This rate is with effect from 01.12.2008.
	Funeral Expenses	From day one of entering insurable employment	For defraying expense on the funeral of an insured person. Rate Actual expenses subject to a maximum of Rs.3,000/- upto 31.08.2009. Now, Rs.5,000/- with effect from 01.09.2009.
	Vocational Rehabilitation	In case of Physical disablement due to employment injury	As long as vocational training lasts. Actual fee charged or Rs.123/- a day whichever is higher
	Physical Rehabilitation	In case of Physical disablement due to employment injury	As long as a person is admitted in an artificial limb centre. Rate: 100% of wages

	Unemployment Allowance	In case of loss of employment due to closure of factory, retrenchment or permanent invalidity due to non-employment injury and the contribution in respect of him have been paid/payable for a minimum of five years prior to the loss of employment.	Maximum one year during the lime time. Rate: 60% of the wages.

9. In view of the above discussion that the Governemnt has considered all the aspects and declined to accept the case of the petitioner to claim exemption. Therefore, this Court finds no merit in this appeal.

10. In result, this Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[P.V.J.,] & [K.K.R.K.J.,]

04.10.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbn

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