



W.P.No.8423 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.8423 of 2025

and

W.M.P.Nos.9443 & 9446 of 2025

Sri Guru Vidhalaya Nursery and Primary School,
Represented by its Correspondent,
Mr.K.Kumarguru,
No.14, New Fire Work Bank Street,
Triplicane, Chennai – 600 005.

... Petitioner

Vs.

The Deputy Director (Ins – VIII),
Regional Office,
Employees' State Insurance Corporation,
No.143, Sterling Road,
Chennai – 600 034.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in order in TN/Ins.VIII/51-00-107155-000-1301/C18Adhoc-Nil dated 23.12.2024 passed by the respondent and quash the same as the order was passed without considering the documents submitted by the petitioner and the same as against the principal of natural justice and direct the respondent to pass fresh orders based on the documents filed by the petitioner and also by taking into consideration of the Judgment of the learned Principal Labor Tribunal, Chennai in ESI O.P.No.189, 190 & 191 of 2021 dated 06.09.2024.



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W.P.No.8423 of 2025

For Petitioner : Mr.Thiyagarajan
Senior Counsel
for M/s.S.Ramesh Kumar

For Respondent : Mr.J.Dharmaraj

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records in order in TN/Ins.VIII/51-00-107155-000-1301/C18Adhoc-Nil dated 23.12.2024 passed by the respondent and quash the same as the order was passed without considering the documents submitted by the petitioner and the same as against the principal of natural justice and direct the respondent to pass fresh orders based on the documents filed by the petitioner and also by taking into consideration of the Judgment of the learned Principal Labor Tribunal, Chennai in ESI O.P.No.189, 190 & 191 of 2021 dated 06.09.2024.

2. Mr.J.Dharmaraj, learned counsel, accepts notice on behalf of the respondent. In view of the consent expressed by the learned counsel appearing for the parties, this writ petition is taken up for final disposal at the stage of admission itself.

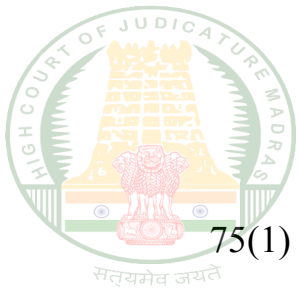


W.P.No.8423 of 2025

3. The case of the petitioner is that, it is an approved Nursery and

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Primary School in the name and style of “Sri Guru Vidhyalaya Nursery and Primary School and the same is registered with Government of Tamil Nadu with registration No.275/2010. The petitioner school is running with an intake of about 200 students and eight staffs altogether which includes five teaching staffs and three non teaching staff. Further, Tamil Nadu Nursery and Primary School management's association by its letter dated 17.09.2012 has requested the petitioner to take trainees towards practical and had sent six trainees to conduct free practical teacher training in the petitioner's school, based on the request, these six trainees were permitted to take free class. There six trainees were neither employed by the petitioner nor paid any salary to them and they were only trainees to conduct free teaching classes for the students and not the employees of the petitioner school. Without considering the petitioner's contention and documents submitted, the respondent had passed an order dated 05.03.2021 holding that the number of employees in the petitioner's school exceeded 10 employees, hence, the petitioner is liable to pay contributions in accordance with Section 40 of the ESI Act r/w Regulation 29 and 31 of ESI (General) Regulation framed under the Act. Aggrieved by the same, the petitioner preferred a statutory appeal u/s

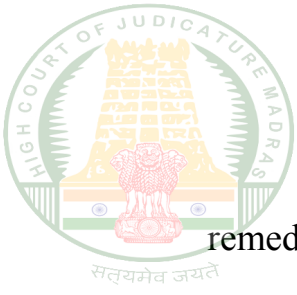


W.P.No.8423 of 2025

75(1) of the ESI Act and the same was allowed. Pending the appeal, the respondent issued another notice calling upon the petitioner to pay contribution. Subsequently, without considering the request and also the earlier records submitted by the petitioner on personal hearing, the respondent passed the impugned order dated 23.12.2024 directing the petitioner to pay a sum of Rs.2,76,276/- for the period from 12/2019 to 09/2023. Challenging the same, the above writ petition is filed before this Court.

4. Learned counsel for the petitioner would submit that, the present writ petition is filed solely on the ground that none of the documents produced by the petitioner was not considered by the respondent and the initial authority u/s 45A of the Act is the fact finding authority. Without considering the documents produced by the petitioner, the fact finding authority passed the impugned order as against the petitioner, which is not sustainable and the same requires to be interfered with. Accordingly, he prays for allowing the writ petition.

5. Learned counsel appearing for the respondent submitted that, as against the order passed by the respondent, there is an effective appeal



W.P.No.8423 of 2025

remedy available before the appellate authority u/s 45AA of the Act.

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Without exhausting the remedy available to the petitioner, filing the present writ petition is not sustainable. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned counsel appearing for the parties and also perused the materials available on record.

7. It is a settled position of law that, when there is a statutory appeal remedy available, without exhausting the appeal remedy, writ petition would not be entertained by the High Courts except the circumstances, where if there is a glaring violation of principles of natural justice or for want of jurisdiction.

8. In the absence of the above situations, no writ petition can be entertained by this Court as there has been a proper alternative effective appeal remedy available.



WEB COPY



W.P.No.8423 of 2025

M.DHANDAPANI, J.

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9. In that view of the matter, this Writ Petition is dismissed granting liberty to the petitioner to workout the remedy in the manner known to law and the period during which this writ petition is pending before this Court is excluded for the purpose of calculating limitation. Further, the petitioner is also at liberty to canvass all the grounds before the appellate authority, which were raised before this Court. No costs. Consequently, the connected writ miscellaneous petitions are closed.

12.03.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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Note: The petitioner is permitted to receive the original impugned order from the Registry to workout the remedy in the manner known to law, after producing a copy of the same.

To
The Deputy Director (Ins – VIII),
Regional Office,
Employees' State Insurance Corporation,
No.143, Sterling Road,
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W.P.No.8423 of 2025