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W.P. No. 6418 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON	02172025
PRONOUNCED ON	032025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. No.6418 of 2020
and
W.M.P. No. 7582 of 2020

TTK Prestige Limited,
Plot No.82, 85 (Rep. by R.Krishraj DGM HR& IR),
SIPCOT Industrial Complex,
Hosur – 635 126
Sr. VP – Legal & Taxation
Rep. by Mr.N.RadhakrishnanPetitioner

Vs.

1.Deputy Director,
ESI Corporation,
39/57, Theerthamalai Vaniga Valagam,
3 Roads, Salem 636 009.
Tamil Nadu.

2.Mr.C.Krishnappa (age 56)
S/o. Sri Chinnabbaiah,
Rep. by Workmen of TTK Prestige Limited,
General Secretary,
M/s. TTK Prestige Employees' Union
Plot No.82 & 85, Sipcot Ind. Complex,
Hosur – 635 126.Respondents



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Prayer in the W.P.

To issue a Writ or order or direction in the nature of Writ, particularly a Writ of Certiorarified Mandamus i.e. to quash the order dated 25.02.2020 made in I.A.No.5 of 2020 in ESIOP.NO.(unnumbered) of 2020 by the Labour Court, Salem as a result of permitting the petitioner herein to withdraw the waiver petition on the basis that Section 75 2B of the Employees State Insurance Act has no application and consequently direct the Labour Court, Salem to take up for hearing un-numbered ESI OP.No. of 2020 on its file.

Prayer in W.M.P.

To grant interim Stay of the operation of order dt. 25.02.2020 passed by the Labour Court, Salem in I.A.No.5 of 2020 pending disposal of the Writ Petition.

Appearance of Parties

For Petitioner : Mr.Shivathanumohan, Advocate
M/s. S.Ramasubramaniam & Associates, Advocates

For Respondent 1: Mr.K.Prabakar, Advocate

For Respondent 2: No appearance

J U D G M E N T



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Heard.

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2. The Petitioner company has filed the present writ petition seeking for an unusual prayer i.e. for a direction to the ESI Court to quash the order made in the application in I.A.No.5/2020 in ESIOP No. (unnumbered) of 2020 by permitting the petitioner herein to withdraw the waiver petition and direct the Court to take up for hearing un-numbered ESIOP.

3. In the writ petition, notice was taken by the standing counsel for ESI and the matter was directed to be posted after notice to be served on the 2nd Respondent Trade Union. The 2nd Respondent though served had not chosen to enter appearance in this case.

4. It is seen from the records the Petitioner aggrieved by the order of the 1st Respondent dt. 6.6.2014 demanding contribution from 1.4.2007 to 31.3.2010. That writ petition after notice to the Respondent was dismissed and both parties were directed to file appeals if aggrieved against the order made under Section 45A to the Appellate ESI Court. In the operative portion of the order the court held as follows:-



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“ (i) The writ petitioner is at liberty to prefer a petition before the ESI Court under [Section 75](#) of the ESI Act challenging the impugned notice dated 06.06.2014 within a period of eight weeks from the date of receipt of a copy of this Order.

(ii) The respondent is directed to file a petition under [Section 75](#) of the Act challenging the order passed by the Authority under [Section 45-A](#) of the ESI Act in proceedings dated 16.11.2011 within a period of eight weeks from the date of receipt of copy of this Order.

(iii) The ESI Court, having jurisdiction, is directed to entertain the petition to be filed by the respondent under [Section 75](#) of the Act by condoning the delay in filing as the respondents were continuing their actions to recover the contributions. Thus, the petition under [Section 75](#) of the Act to be filed by the respondent, is to be decided on merits and in accordance with law.

(iv) The ESI Court, having jurisdiction, is directed to number the appeals, if otherwise those appeals are in order and adjudicate the issues on merits by affording opportunity to all the parties and accordingly, pass orders on merits and in accordance with law as expeditiously as possible, preferably within a period of one(1) year from the date of receipt of copy of the appeals from the respective parties.

(v) The writ petitioner as well as the respondents are directed not to seek any unnecessary adjournments before the ESI Court and the ESI Court is directed to ensure that



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no such unnecessary adjournments are granted and even in case of granting adjournments on certain genuine grounds, the reasons must be recorded for such adjournment.”

5. In compliance with the direction, the petitioner preferred an appeal under Sections 75 before the Labour Court, Salem. The petitioner also filed I.A.No.6 of 2020 seeking a stay and I.A.No. 5 of 2020 seeking a waiver of the pre-deposit requirement. The ESI Court by the impugned order directed predeposit on or before 12.03.2020 as condition precedent to entertaining the Appeal. Under these circumstances the Petitioner has approached this court seeking a direction to the ESI Court (Labour Court, Salem) to permit the withdrawal of the waiver application contending that Section 75(2B) of the ESI Act is inapplicable and that the unnumbered original petition should be taken up for disposal.

6. The petitioner cannot initiate a second round of litigation on the very same subject before this Court. Previously, the High Court declined to entertain the writ petition and directed the petitioner to pursue the statutory remedy under the ESI Act. In compliance, the petitioner approached the ESI Court, which required a pre-deposit before proceeding further. Under Section 75 of the ESI Act, such a pre-deposit



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is a statutory prerequisite for maintaining the appeal. Having been directed to the statutory forum, the petitioner cannot circumvent the statutory conditions by re-approaching the High Court at an intermediate stage. The earlier order of this Court, as extracted above, clearly outlines the procedure to be followed by the ESI Court in considering the petitioner's appeal. If the petitioner wishes to withdraw the waiver in I.A. No. 5/2020, the appropriate course of action is to move the ESI Court, rather than seeking relief from this Court for withdrawal of the waiver and a direction for the ESI Court to hear the appeal.

7. In the light of the circumstance of the case, the writ petition is misconceived and accordingly will stand dismissed. It is open to the Petitioner to work out his rights before the ESI Court in which their appeal is pending in the light of the earlier direction of this court. However, there will be no order as to costs. Consequently, the WMP will also stand dismissed.also stand dismissed.

20.03.2025

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Index: Yes / No

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Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1. The Presiding Officer,
Labour Court, Salem.
2. The Deputy Director,
ESI Corporation,
39/57, Theerthamalai Vaniga Valagam,
3 Road, Salem 636 009, Tamil Nadu.

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P. No.6418 of 2020
and
W.M.P. No. 7582 of 2020



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20.03.2025