



W.P.No.9789 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.9789 of 2021

and

WMP.No.10404 & 10406 of 2021

St. Columbans Anglo-Indian Hr. Sec. School
Rep by its Correspondent,
No. 3, Melean Street,
George Town, Chennai - 600 001.

... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep by its Principal Secretary,
Labour and Employment Department,
Fort St. George, Chennai - 600 009.

2.E. S. I-Regional Corporation (Tamil Nadu)
Rep by its Regional Director,
143, Sterling Road, Chennai - 600 034.

3.E. S. I. Regional Office,
Rep by its Deputy Director,
143, Sterling Road, Chennai - 600 034.

4.Recovery Officer,
E. S. I. Corporation, Panchdeep Bhavan,
143, Sterling Road, Chennai - 600 034.

...Respondents



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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records pertaining to the impugned notice dated 24.10.2019 in NO. TN / INs. VIII / 51-00-106762-000-1302 / C18. Adhoc, on the file of the 3rd respondent in respect of the petitioner aided Anglo-Indian School and quash the same, in compliance of G. O(Ms) NO. 237 Labour and Employment, (K1) Department, dated 26.11.2010 on the file of the 1st respondent.

For Petitioner : M/s.Dr.Fr.Xavier Arulraj,
Senior Counsel
for M/s.Father Xavier Associates

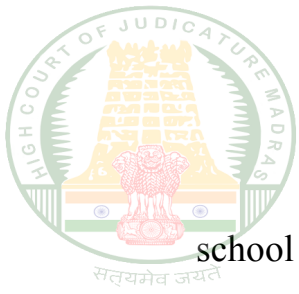
For Respondent : M/s.A.N.Purushotham, Spl. GP for R.1
M/s.S.P.Srinivasan for R.2 to R.4.

ORDER

The above Writ Petition has been filed challenging the impugned notice dated 24.10.2019 issued by the 3rd respondent.

2.The facts are as follows:-

3.The petitioner school was established in the year 1809 and currently has a total student strength of 1405 from Standard I to XII. The total strength of the teaching and non-teaching staff is 34. The petitioner



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school is an aided school and the coverage of the Employees' State Insurance Act (hereinafter called as the "ESI Act") was extended to the Unaided/self-financing educational institutions by G.O.(Ms).No.234 Labour and Employment (K1) Department dated 26.11.2010. Based on the above Government Order, by a notice dated 22.07.2014, the 3rd respondent had directed the petitioner to pay a sum of Rs.4,37,580/- towards contribution for the period 01.02.2013 to 31.05.2014.

4. The petitioner had challenged the above Government Order and the consequent proceedings dated 22.07.2014 in WP.No.28665 of 2014. An interim order of stay was granted on 03.01.2014 and thereafter the Writ Petition along with batch of other Writ Petitions were disposed of with the observation that an interim protection will continue till the matter was disposed of by the Hon'ble Supreme Court in ***State of U.P. Vs. Jaibir Singh Case reported in (1995) 5 SCC 1.***

5. Thereafter, the 3rd respondent had issued two impugned demand notices dated 24.10.2019 demanding a payment of Rs.1,32,479/- and Rs.5,96,134/- being the contribution due from 01.02.2013 till 31.05.2014 and from June 2014 to March 2019. As a consequence, the 4th respondent



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had directed the petitioner to pay a sum of Rs.17,010/- as contribution and interest for the various dates up to 02.11.2019 and revoked the same vide proceedings dated 26.11.2019. However, the proceedings dated 24.10.2019 was not recalled and hence the petitioner is before this Court.

6. The main grievance of the petitioner is that though they have paid the contributions under the head of salary and wages, the demand is now under the head of maintenance building and maintenance others which clearly does not fall within the definition of wages.

7. The respondents 2 to 4 have filed a counter stating that the Writ Petition is not maintainable as the petitioner had an alternate remedy to appeal under Section 75(1) (g) of the ESI Act.

8. An additional counter affidavit has been filed by respondents 2 to 4 pursuant to the query raised by this Court as to how the amounts under the head of maintenance building and maintenance others was added to wages and contribution sought for the said amount. In the said additional counter, respondents 2 to 4 would contend that under Section 2(9) of the ESI Act, the term 'employee' includes labourers as well. The amounts under these two heads (i.e. maintenance building and maintenance others)

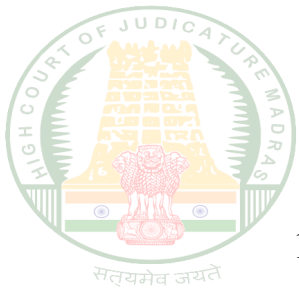


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was towards the construction activity that had been undertaken by the petitioner school for which persons were engaged to do the work. They would therefore submit that the provisions of the ESI Act are also applicable to these workmen.

9. They would also rely upon the judgement of this Court passed in ***CMA.No.1573/2018 - Madras Gymkhana Club Vs. ESIC***, wherein there was an omitted wages with respect to employees employed through immediate employer for capital construction, repair and maintenance of building. In this case, this Court had held that instead of 60% of the bill amount, only 25% of the bill amount on omitted wages to be considered. The respondent would submit that though Gymkhana Club has its main business of catering to its customers by providing food, play area etc, however the construction and repair activity that it had carried out attracted ESI Contribution. Therefore, they would submit that a similar exercise can be done in the instant case. However, the query raised by this Court has not been specifically addressed.

10. Heard the learned counsel on either side.



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11. Section 2(9) of the ESI Act defines employee as follows:-

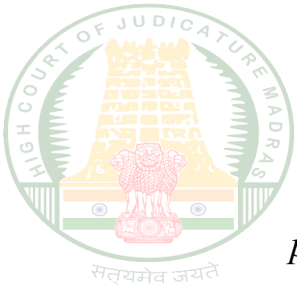
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Section 2(9) - “employee” means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and?

(i) who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the



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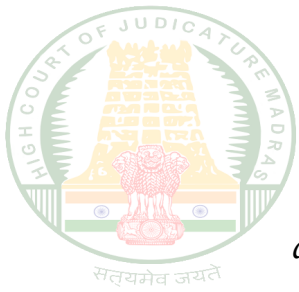
person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), and includes such person engaged as apprentice whose training period is extended to any length of time but does not include?

(a) any member of the Indian naval, military or air forces;

or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time



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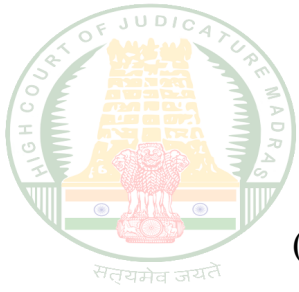
after (and not before) the beginning of the contribution

period, shall continue to be an employee until the end of that period;

12. A perusal of this Section would clearly indicate that the contract employees must be engaged in work carried out by or connected to the principal employer. Admittedly, the construction of building does not form part of the petitioner's activities. The petitioner is an educational establishment. This issue has to be addressed and dealt with by the authority concerned. Therefore, the Writ Petition is disposed of with the following directions:-

(i) The petitioner shall approach the ESI Court by filing an appeal under Section 75 of the ESI Act, and in addition to other issues to be framed by the ESI Court, the following issue shall also be considered:-

"Whether the respondents are right in claiming contribution relating to persons who have been engaged in the construction of the petitioner's school building which is not the business or work in which the petitioner school is engaged with."



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(ii) The appeal is filed within a period of 2 weeks from the date of

receipt of a copy of this order. No costs. Consequently, the connected

Miscellaneous Petitions are closed.

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Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

(shr)

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