

WP.No.18180 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.18180 of 2021

and

WMP.No.19409 of 2021

Sacred Heard Matriculation Higher Secondary School
Rep. by its Correspondent Dr. Rex Abraham,
No.11, 2nd Cross Street, Devaraj Nagar, Sholinganallur,
Rajiv Gandhi Salai, Chennai 600119

... Petitioner

Vs.

1.The E.S.I Corporation
Regional Office (T.N)
Rep by its Regional Director,
Panchadeep Bhavan,
No. 43 Sterling Road,
Nungambakkam, Chennai 600034

2.The Assistant / Deputy Director
Regional Office (Tamil Nadu),
Employees State Insurance Corporation,
No. 143 Sterling Road,
Nungambakkam, Chennai 600034

3.The Recovery Officer
E.S.I., Panchadeep Bhavan,
No. 143 Sterling Road,
Nungambakkam, Chennai 600034

... 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 relating to the assessment orders of the 2nd respondent passed in his proceedings in I.No. TN/ INS VIII/ 51-00-101624 -000-1302 C18 Actual dated 16-10-2019 demanding a sum of Rs. 28,678/- September 2016 to December 2016 ii. No. 51001016240001302 / 352020305/ INS-VIII C19 dated 17-03-2020 demanding a sum of Rs. 1,94,533/- for the period from March 2016 to August 2016 iii. No. 51001016240001302/ 352-2-3-4/ INS-VIII C 19 dated 17-03-2020 demanding a sum of Rs. 39,843/- for the period from September 2016 - December 2016 iv. No. TN/ INS-VIII/ 51-00-101624-000-1302 dated 30-07-2021 and quash the same.

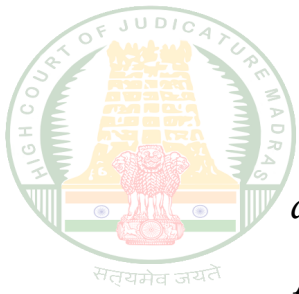
For Petitioner : M/s.P.Ebenezer Paul

For Respondent : M/s.G.Narmadha for R.1 to R.3.

ORDER

The above Writ Petition has been filed for the following reliefs:-

"calling for the records relating to the assessment orders of the 2nd respondent passed in his proceedings in I.No. TN/ INS VIII/ 51-00-101624 -000-1302 C18 Actual dated 16-10-2019 demanding a sum of Rs. 28,678/- September 2016 to December 2016 ii. No. 51001016240001302 / 352020305/ INS-VIII C19



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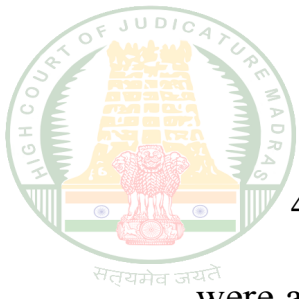
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*dated 17-03-2020 demanding a sum of Rs. 1,94,533/-
for the period from March 2016 to August 2016 iii. No.
51001016240001302/ 352-2-3-4/ INS-VIII C 19 dated
17-03-2020 demanding a sum of Rs. 39,843/- for the
period from September 2016 - December 2016 iv. No.
TN/ INS-VIII/ 51-00-101624-000- 1302 dated 30-07-
2021 and quash the same."*

2. The short facts which are required for disposing of the Writ
Petition are as follows:-

3. The petitioner school is administered by Sacred Heart
Educational Trust, which is a private Trust. The school was
established in the year 1988 with classes 1 to 5. Thereafter, in the year
1991 it was upgraded and classes 6 to 8 were introduced. In the year
1993, it became a high school and in the year 1995 a higher secondary
school. All the classes/standards from LKG to XII standards are
recognized by the Directorate of Matriculation Schools upto the
Academic year 2022.



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4. The petitioner would contend that in the year 2013-14, there were about 1800 students and the same has gradually decreased in the year 2020-2021 to 1307. Similar with reference to the teaching and non-teaching staff. In the year 2013-14, the teaching staff were 65 in number and the non teaching staff were 14 in number. This number has reduced to 35 and 11 respectively in the year 2020-21.

5. The petitioner would submit that they are an un-aided school and therefore not amenable to the ESI Act. On 26.11.2010, under GO.Ms.No.237 un-aided schools were brought within the purview of the ESI Act. The issue as to whether the un-aided schools could be brought within the purview of the ESI Act was the subject matter of varying decisions. Therefore, the matter was referred to a Full Bench of this Court.

6. The petitioner would contend that while holding that the ESI Act would be applicable to both aided as well as un-aided schools, the Full Bench had made it clear that when an application for a waiver is submitted, the arrears could be written off. While the matter is pending before the Division Bench, the notices impugned in the Writ

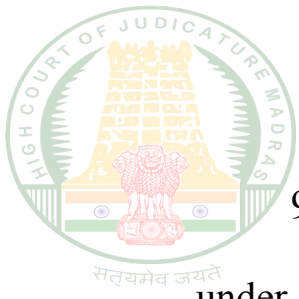


Petition have been issued.

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7. The petitioner would challenge the demand on the ground that the Full Bench has recommended a waiver and therefore the issue of waiver has to be taken into consideration. That apart, the second proviso to Section 45 A (1) of the ESI Act clearly provides that a demand cannot be made beyond the period of 5 years from the date on which the contribution becomes payable. It is the contention of the petitioner that in the instant case, the demand has been made beyond the period of 5 years.

8. The respondents have filed their counter in which they have contended that the issue of waiver is now sub judice before the Hon'ble Supreme Court and is the subject matter of stay. That apart, they would contend that the petitioner has already paid the contribution for the period December 2010 to February 2016 together with interest and damages for belated payment of contribution and therefore they are also liable to pay the contributions due from March 2016.



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9. The respondents would further submit that the order passed under Section 45-A of the ESI Act determining the contribution of Rs.1,35,135/- for the period from 3/2016 to 8/2016 has been passed on 14.07.2017 within the period of 5 years limitation and without challenging the said order under Section 75 of the ESI Act, within the limitation provided under Section 77(1A) of the ESI Act, the petitioner has come forward with the above Writ Petition challenging only the consequential recovery proceedings which is not maintainable. The respondent would also submit that the payment of interest is a statutory liability under Section 39(5), read with Regulation 31(A) of the ESI Act and therefore, the petitioner is not entitled to a waiver.

10. Heard the learned counsel on either side and perused the records.

11. A perusal of the records would indicate that the order passed under Section 45-A of the ESI Act determining the contribution of Rs.1,35,135/- for the period from 3/2016 to 8/2016 has been passed on 14.07.2017 within the period of limitation and without challenging the



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said order the petitioner has come forward with the above Writ Petition challenging only the consequential recovery proceedings.

That being the case, since the consequential recovery proceedings have already culminated in an order under Section 45 (A) of the ESI Act and the same has not been challenged, this Writ Petition cannot be sustained.

12. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.06.2025

(shr)
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

To

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