IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.18183 of 2021
and
WMP.No19411 of 2021

Sacred Heard Matriculation Higher Secondary School
Rep. by its Correspondent Dr. Rex Abraham,
No. 5/145, Nehru Nagar,
Nanmangalam, Chennai 600117

... 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

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 III/ 51-00-106320-000-1302 C18 Adhoc dated 26-09-2019 demanding a sum of Rs. 3,86,750/- for the period from May 2018 to June 2019 . ii. No. TN/ INS.III/ 51-00-106278-000-1302 C-18 Interest dated 16-09-2019 demanding a sum of Rs. 64,200/- towards interest for the period from November 2014 , March 2016 to April 2018 iii. No. TN/ INS.III/ 51-00-1063200- 000-1302 D18 dated 26-09-2019 demanding payment of damages of Rs. 1,28,193/- for the period from November 2014 , March 2016 to April 2018. v.No.TN/INS.III/51-00-106320-000-1302 dated 25.02.2021 demanding a sum of Rs.3,86,750/- for the period from May 2018 to June 2019. vi.No.TN/Ins-III/51-00-106320-000-1302 dated 08-04-2021 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 III/ 51-00-106320-000-1302 C18 Adhoc dated 26-09-2019 demanding a sum

of Rs. 3,86,750/- for the period from May 2018 to June 2019 . ii. No. TN/ INS.III/ 51-00-106278-000-1302 C-18 Interest dated 16-09-2019 demanding a sum of Rs. 64,200/- towards interest for the period from November 2014 , March 2016 to April 2018 iii. No. TN/ INS.III/ 51-00-1063200- 000-1302 D18 dated 26-09-2019 demanding payment of damages of Rs. 1,28,193/- for the period from November 2014 , March 2016 to April 2018. v.No.TN/INS.III/51-00-106320-000-1302 dated 25.02.2021 demanding a sum of Rs.3,86,750/- for the period from May 2018 to June 2019. vi.No.TN/Ins-III/51-00-106320-000-1302 dated 08-04-2021 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 2000 with classes 1 to 5. Thereafter, in the year

2001 it was upgraded and classes 6 to 8 were introduced. In the year 2005, it became a high school and in the year 2021 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.

4. The petitioner would contend that in the year 2013-14, there were about 560 students and the same has increased in the year 2020-2021 to 761. Similar with reference to the teaching and non-teaching staff. In the year 2013-14, the teaching staff were 24 in number and the non teaching staff were 7 in number. This number has changed to 32 and 7 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.

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 contributions for the period June 2013 to November 2014 and November 2015 to April 2018 and therefore they are also liable to pay the contributions due from May 2018.

9. The respondents would submit that without challenging the order dated 06.12.2019 levying damages under Section 85(b) of the ESI Act, the petitioner cannot challenge the consequential recovery proceedings dated 02.02.2021 and the show cause notice dated 26.09.2019 which was issued prior to the order dated 06.12.2019.

10. The respondent would further submit that having challenged the order passed under Section 45(A) of the ESI Act dated 08.04.2021 determining contribution of Rs.3,86,750/- for the period from 5 May 2018 to June 2019 it is not open to the petitioner to now challenge the show cause notice issued earlier on 26.09.2019 as also the letter dated 25.02.2021 calling upon the petitioner to appear for the personal hearing on 16.03.2021. The respondents 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.

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

12. A perusal of the records would indicate that without challenging the order dated 06.12.2019 levying damages under Section 85(b) of the ESI Act, the petitioner has come forward with the above Writ Petition challenging the consequential recovery proceedings and the show cause notice dated 26.09.2019 which was issued prior to the order dated 06.12.2019. That being the case, since the petitioner has not exhausted the alternative remedy available under Section 75 of the ESI Act, the Writ Petition is not maintainable. That apart, since there was no response from the petitioner to the show cause notice dated 26.09.2019, an order under Section 45A of the ESI Act was passed on 08.04.2021, determining the contribution for the period from May 2018 to June 2019, which is well within the limitation period prescribed under Section 45A(2) of the ESI Act.

13. 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

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