



C.M.A(MD)No.208 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 17.11.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.208 of 2013

1.The Deputy Director

ESI Corporation

Sub Regional Office,

1 B, Old Post Office Road, Tallakulam

Madurai – 625 002.

2) The Recovery officer

Employees State Insurance Corporation,

Sub Regional Office,

1 B, Old Post Office Road, Tallakulam

Madurai – 625 002.

... Appellants/Respondents

Vs.

M/s. Renuga Security Services

Rep. by its Partner Mr.R.Alagarsamy

S.N.R.Line, Periyakulam Road,

Theni-625 531.

... Respondent/Petitioner



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PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of E.S.I.

Act, 1948 to set aside the decree and judgment dated 17.11.2011 made in E.S.I.O.P.No.35 of 2001 on the file of the ESI Court (Labour Court), Madurai and allow this Civil Miscellaneous Appeal.

For Appellants : Mr.C.Karthik

For Respondent : No appearance

JUDGMENT

The appellants/respondents ESI Corporation has filed this Civil Miscellaneous Appeal against the fair and decretal order dated 17.11.2011 made in E.S.I.O.P.No.35 of 2001 on the file of the ESI Court, (Labour Court), Madurai.

2.The brief case of the claimant is as follows:-

The petitioner is a partnership firm engaged in providing security services to industrial establishments on contract basis. The petitioner firm was started on 01.01.1996. It is covered under ESI Act. The petitioner employs 50 to 70 security men for security services. The



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petitioner has covered all the employees under ESI Scheme. The petitioner has been paying ESI contribution without default. There was no arrears of ESI contribution for the period from 01.04.1997 to 31.03.1999. The petitioner has been paying the travelling allowances, uniform allowances to the employees. The above allowances are excluded from the definition of wages as defined under Section 2(22) of ESI Act. Hence, the petitioner is under no obligation to pay ESI contribution for the travelling allowances and uniform allowances. The petitioner received a notice dated 06.01.2000 from the 1st respondent proposing to determine contribution and the amount paid by the petitioner to the security personnel as travelling allowances and uniform allowances. The respondent issued form C.18 adhoc notice dated 15.02.2000 to the petitioner. The ESI Corporation sent a letter to the Manager ESI Corporation, Theni to serve the notice on the petitioner. The notice was served on the petitioner. According to the notice personal hearing was fixed on 03.05.2000 at 3.00 pm at the 1st respondent office at Madurai. As the notice was returned and the personal hearing was refixed on 21.06.2000. The said notice dated 15.02.2000 was actually served on the petitioner by ESI Office, Theni only on 20.07.2000. Therefore, the petitioner could not attend the personal hearing on



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21.06.2000. The respondent has not given any opportunity to defend the case. The 1st respondent had straight away passed the 45-A order dated 25.08.2000 without hearing the petitioner. The order dated 25.08.2000 was received by the petitioner on 22.09.2000. Immediately the petitioner sent a letter to the 1st respondent ESI Corporation dated 03.10.2000 stating all the details. The petitioner has also submitted in its letter dated 03.10.2000 stating that they need not pay ESI contribution for travelling allowances and uniform allowances. Hence, the order under Section 45-A of the Act dated 25.8.2000 is not valid. The said order was passed in violation of principles of natural justice. The petitioner was not given opportunity to make their submissions. In fact they are not liable to pay contribution on allowances and the determination of the contribution for travelling allowances and uniform allowances is not valid. Hence, the order of the respondents under Section 45-A of the Act dated 25.08.2000 claiming contribution for the period from 4/97 to 3/99 is liable to be set aside. Hence, the petition.

3. The brief facts of the respondents case are as follows:-

The petition is not maintainable. The petitioner has not come with clean hands. The petitioner has suppressed the real facts. All the



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allegations stated in the petition are false. It is not correct to say that the cycle allowances and uniform allowances paid by the petitioner unit are exempted from the purview of Section 2(22) of ESI Act. The petitioner has attempted to show low wages for ESI contribution for the period from 01.04.1997 to 31.03.1998. The petitioner had shown the wages paid by the petitioner to the employees as Rs.4,42,551.91. The cycle allowances and uniform allowances during the same period were Rs. 2,12,408.13 each. It is stated that 88 employees were working in the petitioner unit. The monthly wages for each employee as per Register is Rs.419.08 only. On the other hand, a sum of Rs.201.14 had been paid as Cycle allowances and uniform allowances during the same period. The petitioner had attempted to evade the payment of ESI contribution by showing real wages as Cycle allowances and uniform allowances. Hence the allowances have been rightly treated as wages. The respondent has sent notice in C.18 dated 15.02.2000 by registered post to the petitioner about the determination of ESI contribution. The petitioner was also given personal hearing on 03.05.2000. The notice was returned as 'unclaimed'. Then it was ascertained that the notice was delivered to the petitioner. The petitioner was in the habit of avoiding to attend the personal hearing and they had failed to produce records. Hence the



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respondent passed the order under Section 45-A of the Act. The petitioner has no locus standi to file the petition. Hence, the order of the respondents dated 25.08.2000 is legal. Therefore, the respondents are entitled to recover the amount. Hence, prays for dismissal.

4. During trial, on the side of the petitioner, no oral evidence was let in and Ex.P1 to Ex.P7 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 to Ex.R5 were marked.

5. After hearing the parties and perusing the records, the Labour Court allowed the petition by setting aside the order of the respondent dated 25.08.2000 and also recovery notice dated 22.12.2000 and remitted back to the 1st respondent for fresh disposal, after hearing the petitioner.

6. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the appellants who are the respondents ESI Corporation before the Labour Court, with the following among other grounds:-

(i) That the learned Judge failed to consider that the respondent



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was not at all interested to neither adduce evidence nor come forward to produce the documents before the learned Judges to prove his case.

(ii) That the learned Judge failed to consider that the respondent does not mentioning anything about the payment paid to his employees in respect of travelling allowances and uniform allowances. Therefore, it is very clear that the respondent not having possession of above said documents.

(iii) Admittedly the respondent did not approach the Enquiry Officer itself indicated that lethargic attitude of the respondent. The respondent employer has not filed any documents either at the time of personal hearing or before the trial Court to prove his case. Therefore, remanding the above matter to the Appellant Corporation is nothing but waste of time.

Therefore, prayed to set aside the order of the Labour Court and allow the Civil Miscellaneous Appeal.

7. Heard the learned counsel appearing for the appellants and perused the materials available on record.

8. Now, this Court has to decide the following point for



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consideration:-

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1. Whether the order passed by the Labour Judge, is proper or liable to be set aside ?

9. Point No.1 :

According to the appellant, the respondent failed to pay to travelling allowances and uniform allowances due to the security person. Consequently C.18 adhoc notice was issued to the respondent calling for a personal hearing on 03.05.2000. Since the notice was returned as 'unclaimed'. Another notice was issued, fixing a fresh date of personal hearing on 21.06.2000, which was duly served on him. However, the respondent failed to appear and did not produce the documents. Therefore, a final order passed under Section 45-A directing payment of the amounts due.

10. The respondent in their counter categorically denied the allegations made by the appellant and contended that the allowance are excluded from the definition of wages. However according to the respondent, the appellant Corporation had shown an excessive amount as due and the impugned order was passed without affording them an



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opportunity of being heard and behind their back. Hence, the order is liable to set-aside. The respondent denied the service of notice, contended that the notice sent for personal hearing on 21.06.2000 was actually served by the ESI office only on 20.07.2000.

11. Though the appellant claimed to have issued two notices to the respondents, they produced only one acknowledgement Ex.R5, which clearly shows that the notice was returned as unclaimed. Normally, it is the duty of the postman to make an endorsement on the returned cover indicating the details of attempt to send the addressee and such should conclude with the remark unclaimed. However no such endorsement is found on the returned cover. Further, the date and year of the returned cover cannot be verified as it appears to be only Xerox copy. The concerned postman was not examined to prove the service of notice. Therefore, the material on record is not sufficient to establish that the respondent was served with notice or that the notice was refused by the respondent.

12. As per section 44 of the Employee's State Insurance Act, 1948,



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Section 44. Employers to furnish returns and maintain registers in certain cases - (1) every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulation made in this behalf.

(2) where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

13. Ex.P2 is the form C.18 adhoc notice which has been marked as undelivered. Subsequently, through their letter dated 11.05.2000, the appellant issued a directions as reflected in Ex.P2 to the local ESI Corporation office, Theni to serve the notice as per the enclosed form on their respondents and to forward the acknowledgement within 15 days from the date of receipt. Although the appellants has



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stated that the notice was served and on 21.07.2000, the appellants has not produced any materials to establish that the notice was in fact, served within time by their local office.

14. Section 44 of E.S.I. Act, 1948 mandate that, before initiating proceedings under section 45-A of Act, 1948 the Corporation must require the employer to furnish the particulars or documents sought. It is therefore the duty of the corporation to establish that a notice was issued to the respondent calling for such documents. However, in the present case, the Corporation failed established that any such notice, providing an opportunity to the employer to produce the required documents or to be heard in person before passing any order is essential and has not produced any proper acknowledgement to establish that the notice for personal hearing was due served on the respondent.

15. The Labour Court has therefore rightly set aside the 45-A order and remanded back the matter for fresh hearing. The order of the Labour Court does not warrant any interference, the appeal is liable to be dismissed. The point is answered accordingly.



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16. This Court direct the respondent to appear before the appellant Corporation within 15 days from the date of receipt of a copy of this order and the appellant Corporation shall also issue notice to the respondent for personal hearing within 15 days from the date of receipt of order and to conclude the proceedings with in a period of three months from the date of receipt of a copy of this order.

17. In the result, the Civil Miscellaneous Appeal is dismissed. The order dated 17.11.2011 passed in ESIOP No. 35 of 2001 by the Labour Court, Madurai is here by confirmed. No costs.

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Index : Yes / No
NCC : Yes / No

RM



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To

1.The Labour Court/ESI Court,
Madurai

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

RM

Judgment in

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