BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.23169 of 2024
and
WMP(MD)No.19631 of 2024

DD.160, Dindigul District Co-Operative
Milk Producers Union Ltd,
Represented through its General Manager,
No.9, East Govindapuram,
Dindigul – 624 001. ... Petitioner

Vs

1.The Principal Secretary to Government,
Labour and Employment (L1) Department,
Fort St. George, Chennai – 9.

2.The Deputy Director,
Employees State Insurance Corporation,
2nd West Street, KK Nagar,
Madurai – 20. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to the order of the 1st respondent passed in Letter e-file No.5364/L1/2023-1, dated 11.10.2023 and quash the same and direct the 1st respondent to reconsider the proposal in ref. No. 4636/E-1/2019, dated 15.09.2023 for granting exemption u/s 88 r/w Section 91-A of the ESI Act, 1948 for the periods w.e.f14.10.2022 to 13.10.2023.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondent No.1 : Mr.G.V.Vairam Santhosh, Additional Govt. Pleader

For Respondent No.1 : Mr.I.Pinayagash

ORDER

The petitioner Dindigul Co-Operative Society Milk Producers Union has requested the government to grant exemption from the coverage of the Employees' State Insurance Act, 1948 [in short 'ESI Act'] from 14.10.2022 to 13.10.2023 retrospectively under Section 87 r/w 91-A of the ESI Act. It was rejected by the government vide impugned proceedings dated 11.10.2023 that as per Section 91-A of the ESI Act, exemption if any can be given prospectively on such date as may be specified therein and therefore, the request of the petitioner's society for grant of exemption from the coverage of ESI Act retrospectively from 14.10.2022 to 13.10.2023 based on their application dated 15.09.2023 was rejected by the impugned order in this writ petition.

2.The learned Counsel for the petitioner submits that the petitioner's milk producers union is a quasi-government organisation and its employees paid as that of the government employees and all other benefits are provided to them on par with the government employees. Therefore, the employees working in the petitioner's union have been exempted from the ESI Act. The Government of Tamil Nadu time and again granted exemption for the employees of the union from the coverage of the ESI Act by invoking Section 88 r /w Section 91-A of the ESI Act. The learned Counsel has also relied on the Government order in GO(D)No.622 Labour and Employment (L1) Department dated 28.08.2007, which exempted the union for the period from 01.04.2000 to 31.03.2005 from the coverage of the ESI Act. Similarly the government exempted the petitioner union from the coverage of ESI Act through

GO(D)No.261 Labour and Employment (L1) dated 18.07.2010 for the period 01.04.2007 to 31.03.2008. The petitioner has also stated that exemptions were provided even for the year 2023 to 2024.

3.The learned Counsel for the petitioner has relied on the judgment of this Court in WP.No.17572 of 2010, dated 21.06.2011, wherein this Court has allowed one such application that the society is registered under the Tamil Nadu Co-Operative Societies Act and the employees are entitled for medical allowance and other benefits as applicable to the government servants on par with other government servants and since the employes are enjoying more benefits than the benefits available under the ESI Act, the petitioner society is entitled for the exemption. The exemption was provided to similar societies for the period 01.04.2005 to 31.03.2008.

4.The learned Counsel for the petitioner has also relied on the show cause notice issued by the 2nd respondent dated 24.06.2024 that the exemption has not been granted to the petitioner union.

According to the learned Counsel, the 1st respondent is vested with the power under Section 88 r/w Section 91-A of the ESI Act to grant exemption and such relief was already granted by this Court in the earlier writ petition and that the petitioner society a quasi-government organisation is extending the more benefits than provided under the ESI Act to its employees and therefore, they have to be necessarily exempted from the ESI Act.

5.The learned Counsel for the 2nd respondent submits that the petitioner society did not comply with the mandatory requirements provided under Sections 87 and 91-A of the ESI Act. The petitioner has made application belatedly on 15.09.2023, seeking exemption for the period from 14.10.2022 to 13.10.2023. Further as per Section 91-A of the ESI Act, exemption can be granted only prospectively.

6.This Court considered the rival submissions made and also perused the materials.

7.The petitioner has made an application seeking exemption of coverage under the ESI Act from 14.10.2022 to 13.10.2023. However the application was made only on 15.09.2023. As per Section 87 of the ESI Act, the application for exemption, if any, for renewal shall be made three months prior to the date of expiry of the existing exemption period. As per the amended provision under Section 91-A of the ESI Act, exemption can be granted only prospectively. The petitioner seeks exemption retrospectively. Section 87 of the ESI Act enables the government to exempt any factory or establishment or class of factories or establishments specified area from the operation of the ESI Act for the period of one year by notification in the official gazette. The exemption may be granted only if the employees of such factories or establishments or otherwise in receipt of the benefits substantially similar or superior to the benefits provided under the ESI Act.

8.The proviso to Section 87 of the ESI Act mandates that the application for exemption shall be made three months prior to the expiry of the existing exemption period. The exemption can be granted under Section 91-A of the ESI Act either prospectively or retrospectively. However as per the amended provision under Section 91-A of the ESI Act, there cannot be any exemption retrospectively and therefore, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed. No costs.

16.05.2025

DSK

To

1.The Principal Secretary to Government,
Labour and Employment (L1) Department,
Fort St. George, Chennai – 9.

2.The Deputy Director,
Employees State Insurance Corporation,
2nd West Street, KK Nagar,
Madurai – 20.

B.PUGALENDHI, J.

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