

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 6653 of 2004 (P)

PETITIONER(S):

- 1. K.S. SADANANDAN, PATHIKKATTIL HOUSE,
POOTHOTTA, ERNAKULAM DISTRICT.**
- 2. ANILKUMAR, AMBATTU HOUSE,
AMBALLUR, KANJIRAMATTOM.**
- 3. RAJEEV, AMBATTU HOUSE,
AMBALLUR, KANJIRAMATTOM.**
- 4. AJITHKUMAR, AMBATTU HOUSE,
AMBALLUR, KANJIRAMATTOM.**

BY ADV. SRI.G.PRABHAKARAN

RESPONDENT(S):

- 1. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
ERNAKULAM.**
- 2. GOVERNMENT OF KERALA, REPRESENTED BY
THE COMMISSIONER AND SECRETARY TO LABOUR DEPARTMENT,
THIRUVANANTHAPURAM.**
- 3. THE DISTRICT COLLECTOR, ERNAKULAM.**
- 4. THE TAHSILDAR (REVENUE RECOVERY),
KANAYANNOOR TALUK.**

*** ADDITIONAL R5 IMPEADED.**

- 5. CHIEF EXECUTIVE OFFICER,
MOTOR TRANSPORT WORKERS WELFARE FUND,
TRIVANDRUM.**

*** IS MADE ADDITIONAL RESPONDENTS BY ORDER DTD.26.2.2004.**

**R1 BY ADV. SRI.PRAMAKRISHNAN, SC,KMTWF BOARD
R2-R4 BY GOVERNMENT PLEADER SMT.LILLY LESSLIE**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 6653 of 2004 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE PARTNERSHIP DEED DTD.1.11.1989.

EXT.P2: TRUE COPY OF THE FINAL DETERMINATION ORDER DTD.30.12.2000.

EXT.P3: TRUE COPY OF THE APPEAL MEMORANDUM DTD.19.3.2001.

**EXT.P4: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT APPELLATE
AUTHORITY DTD.8.11.2003.**

EXT.P5: TRUE COPY OF THE JUDGMENT DTD.17.6.2009 IN WPC.NO.22133/2003.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ANU SIVARAMAN, J.

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W.P. (C) No.6653 of 2004

Dated this the 18th day of September, 2015

J U D G M E N T

This writ petition is filed by four petitioners who are stated to be partners in conducting stage carriage operation, against Ext.P2 final determination order under the Kerala Motor Transport Workers Welfare Fund Act, 1985(*hereinafter referred as "the Act"*)as well as Ext.P4 order of the Government passed in appeal. It was the specific case of the petitioners that they were not employees and were partners conducting stage carriage operation and therefore they are not liable to pay any amounts under the Ext.P2 final determination order was issued to them even though they had produced the partnership deed, audited accounts and all available documents to prove their contentions. Thereafter, Ext.P3 appeal was preferred and by Ext.P4 order, the same was also rejected on the ground that the partnership deed executed on 01.11.1989 was registered only on 15.10.1999. The dispute in this case is with regard to the contributions allegedly due for the period from 1996 to 1999.

2. It is submitted by the learned counsel for the petitioner

that with respect to the period from 1994 to 1996 in respect of the petitioners, similar orders were passed in appeal by the Government which was taken up by the 1st petitioner before this Court by filing W.P.(C) No. 22133 of 2003. In that writ petition, after considering the objections raised by the respondents also this Court had held that the stand taken by the appellate authority discarding the contentions regarding partnership solely based on the date of registration is untenable. The assessing officer was therefore directed to reconsider the issue with specific reference to the question whether there was any partnership and whether any of the partners were engaged as employees. The 1st respondent was directed to conduct the enquiry and adjudication after hearing the petitioners herein. The matter is still pending and no orders have been passed as directed, it is submitted by the learned counsel for the petitioner.

3. The first respondent has filed a statement pointing out that the existence or otherwise of a partnership is a question of fact and the authority in Ext.P1 final determination order had found that petitioners 2 to 4 were working in the motor transport undertaking and they were entitled to the benefits under the welfare fund scheme.

4. Heard, Sri. P. Santhosh Kumar, learned counsel

appearing for the petitioner and Sri. P. Ramakrishnan, learned Standing Counsel appearing for the respondents 1 and 5 as well as Smt. Lilly Leslie, learned Government Pleader appearing for respondents 2 to 4.

5. It is submitted by the learned counsel for the petitioners that the non-registration of the partnership deed would not be of any consequence in the instant case, since petitioners 2 to 4 who have been assessed as employees are admittedly partners on their own showing and that all records to prove existence of such a partnership were available with the assessing authority even at the time of Ext.P1 assessment. The assessing authority had also found that the partnership was in existence. However, it was on the ground that the partnership deed had not been registered that the contentions of the petitioners were negated by the assessing authority as well as the appellate authority. It has been specifically held by Division Bench of this Court in its judgment dated 29.06.2015 in W.P. (C) No. 2464/2010 that non-registration of a partnership deed in such a situation cannot be relied upon to hold that there was no partnership in existence. It is held that the partnership deed is not a document which is liable to be compulsorily registered under Section 17 of the Registration Act. It is also held that in

case parties have discharged their liability to prove that there was a partnership in existence, such materials have to be taken into account to hold that there was a partnership.

In the above view of the matter, Ext.P2 and P4 are quashed. The 1st respondent is directed to conduct necessary enquiry and adjudication in the matter of assessment under the Act after affording proper opportunity to the petitioners and to issue fresh orders of final determination with respect to the period from 1996 to 1999 within a period of three months from the date of receipt of the copy of the judgment, if the petitioners are found liable to pay any amount. The petitioner shall produce a copy of the judgment as well as a copy of the judgment of the Division Bench in W.P. (C) No. 2464 of 2010, before the 1st respondent. The 1st respondent shall specifically consider the findings contained in the judgment of the Division Bench, while passing orders as directed above.

Sd/-
ANU SIVARAMAN,
JUDGE

DST

//True copy//

P.A. To Judge