

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 14874 of 2009 (D)

PETITIONER:

SHIHABUDHIN, NAUFAL MANZIL,
MARUTHIKUNNU P.O., NAVAYIKULAM,
THIRUVANANTHAPURAM.

BY ADVS. SRI.P.V.JAYACHANDRAN
SRI.M.S.SAJEEV KUMAR
SMT.KEERTHI SOLOMON

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY JOINT SECRETARY TO LABOUR
LABOUR AND REHABILITATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD
THIRUVANANTHAPURAM.
3. THE DEPUTY TAHSILDAR (RR),
CHIRAYINKEEZHU, NAVAYIKULAM, THIRUVANANTHAPURAM.

R1 & R3 BY GOVERNMENT PLEADER SRI P.V.ELIAS
R2 BY SRI.C.K.JAYAKUMAR, SC, KMTWWFB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C)No.14874/09

PETITIONER'S EXTS:

- EXT.P1: COPY OF RECEIPT DT.NIL.
- EXT.P2: COPY OF RECEIPT DT.NIL
- EXT.P3: COPY OF RECEIPT DT.NIL.
- EXT.P4: COPY OF FINAL ASSESSMENT ORDER DT.26.11.98.
- EXT.P5: COPY OF APPEAL DT.18.3.99.
- EXT.P6: COPY OF JUDGMENT DT.5.4.99.
- EXT.P7: COPY OF ASSESSMENT ORDER DT.6.12.99.
- EXT.P8: COPY OF APPEAL DT.21.1.2000.
- EXT.P9: COPY OF DEMAND NOTICE DT.NIL.
- EXT.P10: COPY OF DEMAND NOTICE DT.NIL.

RESPONDENTS' EXTs:

- EXT.R1(A): COPY OF SALE DEED PRODUCED BEFORE THE 2ND RESPONDENT
EXECUTED ON 3.7.99.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

W.P.(C)No.14874 Of 2009

DATED THIS THE 30th DAY OF JULY, 2015

JUDGMENT

The petitioner, who is the registered owner of a stage carriage bearing registration No.KL-7/M-7898 has approached this Court in this Writ Petition seeking a writ of certiorari to quash Exts.P4 and P7 assessment orders issued by the 2nd respondent and also Exts.P9 and P10 demand notices issued by the 3rd respondent. The petitioner has also sought for a writ of mandamus commanding the 1st respondent to furnish a copy of the order in Ext.P8 statutory appeal filed by him forthwith and to stay all further proceedings pursuant to Exts.P9 and P10 demand notices during the pendency of this Writ Petition.

2. Heard arguments of the learned counsel for the petitioner, the learned Standing Counsel for the 2nd respondent and also the learned Government Pleader appearing for the 3rd respondent.

3. The learned counsel for the petitioner would contend that, the petitioner filed Ext.P8 appeal dated 20.1.2000 before the

1st respondent against Ext.P7 final determination order dated 6.12.1999 issued by the 2nd respondent for the period 1998-99 for an amount of Rs.11,093/-, towards the contribution payable under the Kerala Motor Transport Workers Welfare Fund. Though the said appeal was filed as early as on 20.1.2000, the 1st respondent is yet to take a decision in it and during the pendency of that appeal he was issued with Exts.P9 and P10 demand notices of the 3rd respondent. The learned counsel for the petitioner would contend further that, the recovery proceedings pursuant to the aforesaid demand notices were stayed by this Court in Ext.P6 Judgment dated 5.4.1999 in O.P.No.8876 of 1999, by which this Court has directed the 1st respondent to consider Ext.P5 appeal filed before the 1st respondent dated 18.3.1999 against Ext.P4 final determination order dated 26.11.1998 issued by the 2nd respondent for the period 1997-98.

4. In the counter affidavit filed on behalf of the 1st respondent, the genuineness of Exts.P1 to P3 receipts produced by the petitioner is disputed. The learned Senior Government Pleader would contend that, Ext.P5 appeal filed by the petitioner

was dismissed as time barred by G.O.(Rt.)No.956/99/LBR dated 29.3.1999, much prior to Ext.P6 Judgment of this Court in O.P.No.8876 of 1999. Similarly, Ext.P8 appeal filed by the petitioner against Ext.P7 final determination order dated 6.12.1999 was allowed and the matter was remanded to the 2nd respondent for denovo enquiry vide G.O.(Rt.)No.1143/01/LBR dated 29.3.2001. After denovo enquiry, the 2nd respondent issued final determination order No.B2.ET.53/98-99 dated 28.4.2001 to the petitioner for an amount of Rs.10,647/- for the period 1998-99. The learned Senior Government Pleader would also point out that the petitioner and the employees were also present in the denovo enquiry conducted by the 2nd respondent on 28.4.2001.

5. Then the learned counsel for the petitioner would submit that, the petitioner is yet to be served with a copy of the order passed by the 1st respondent on Ext.P8 appeal and also the final determination order No.B2.ET.53/98-99 dated 28.4.2001 issued by the 2nd respondent after the denovo enquiry.

6. I notice that the petitioner has not chosen to file any reply affidavit denying the specific stand taken by the 1st

respondent in the counter affidavit that, the petitioner and the employees were present in the denovo enquiry conducted by the 2nd respondent on 28.4.2001. When the petitioner himself has participated in the denovo enquiry, I find no force in the submission made by the learned counsel for the petitioner that, the petitioner is yet to be served with a copy of the order passed by the 1st respondent on Ext.P8 appeal. The further stand taken in the counter affidavit filed by the 1st respondent is that, after the denovo enquiry, the 2nd respondent issued final determination order No.B2.ET.53/98-99 dated 28.4.2001 to the petitioner for an amount of Rs.10,647/- for the period 1998-99. If the petitioner is yet to be served with a copy of final determination order No.B2.ET.53/98-99 dated 28.4.2001, the 2nd respondent shall forward a copy to the petitioner, within a period of three weeks from the date of receipt of a certified copy of this Judgment, and the 3rd respondent shall keep in abeyance any recovery proceedings pursuant to final determination order No.B2.ET.53/98-99 dated 28.4.2001, for a period of one month from the date of issuance of that order, so as to enable the

petitioner to avail the statutory remedy. On the other hand, if a copy of final determination order No.B2.ET.53/98-99 dated 28.4.2001 has already been served on the petitioner in the year 2001 itself, the 2nd respondent shall forward a copy of the acknowledgment/receipt evidencing service of the said order on the petitioner, within a period of three weeks from the date of receipt of a certified copy of this Judgment, in which event the 3rd respondent shall be at liberty to proceed with any recovery proceedings pursuant to final determination order No.B2.ET.53/98-99 dated 28.4.2001.

The Writ Petition is disposed of as above. No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE

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