

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 21220 of 2015 (B)

PETITIONER(S):

**S.KUMARESAN, AGED 54 YEARS
S/O.SUBRAMANIAN PILLAI, 3/164, RAILWAY COLONY,
KALLEKULANGARA, PALAKKAD.**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.D.S.THUSHARA
SRI.H.PRAVEEN (KOTTARAKARA)**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. THE CHIEF EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
KOLLAM-691001.**
- 3. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
NINAN COMPLEX, METTUPALAYAM STREET, PALAKKAD-678731.**
- 4. C.KRISHNAN,
KUNNAMKUDAM HOUSE, THIRUVALATHUR P.O., KODUMBU
PALAKKAD-678551.**

**R1 BY GOVERNMENT PLEADER SMT.K.A. SANJEETHA
R2 & 3 BY ADVS.SRI.P.RAMAKRISHNAN, SC
SRI.K.S.MANU, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE ORDER NO.EL-862/88-98/RVD DT.11-3-2004.

EXT.P2 : TRUE COPY OF THE ORDER NO.862/98-02 DT.18-10-2002.

**EXT.P3 : TRUE COPY OF THE RECEIPTS DT.19-4-2004 27-12-2004, 5-8-2006, 4-5-1999,
7-2-2003.**

EXT.P4 : TRUE COPY OF THE FINAL DETERMINATION ORDER DT.11-12-2007.

EXT.P5 : TRUE COPY OF THE JUDGMENT IN WA 304/2008 DT.18-6-2010.

EXT.P6 : TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY R3 DT.5-1-2011.

**EXT.P7 : TRUE COPY OF THE ORDER PASSED BY R1 GOVERNMENT AS GO(RT)
701/2013/LBR DT.19-4-2013.**

**EXT.P8 : TRUE COPY OF THE PROVISIONAL DETERMINATION ORDER NO.EL 862/88-
03 ISSUED BY R3 DT.8-4-2015.**

**EXT.P9 : TRUE COPY OF THE MEDICAL CERTIFICATE DT.12-7-2015 ISSUED BY
DR.M.K.HEMACHANDRAN, BAMS, CHIEF MEDICAL OFFICER DISTRICT
AYURVEDA HOSPITAL.**

**EXT.P10 : TRUE COPY OF THE FINAL DETERMINATION ORDER NO.EL 862/88/03
DT.29-6-2015.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21220 of 2015

Dated this the 14th day of July, 2015

J U D G M E N T

The petitioner is challenging Ext.P10 final determination order passed by the 3rd respondent.

2. The petitioner, who was the owner cum driver of the a tourist van bearing Reg.No.KRP 8047, replaced the said vehicle with vehicle bearing Reg.No.KL 9A 4850. Assessment was made under the Kerala Motor Transport Workers Welfare Fund Act by the Assessing Authority, the 3rd respondent, for the year 1988-89 to 1997-98, in the year 1999, showing the petitioner as the owner and the 4th respondent as the driver. Final determination order was set aside in appeal by the Government and directed the 3rd respondent to reassess and fix the liability. By Ext.P1 order, it is shown that the petitioner is the owner and driver. Ext.P2 is in respect of subsequent years. The petitioner alleges that the entire amount was paid by the

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petitioner as evident from Ext.P3. A petition to refund the amount is pending. Again, a rejoinder provisional determination order was issued as evident from Ext.P4 dated 11.12.2007. In Ext.P5 judgment in WA No.304/2008 filed by the petitioner, the assessing authority was directed to reconsider the whole issue. Ext.P6 order was passed thereafter finding that the petitioner is the owner and the 4th respondent is the driver. But, the liability is reduced to ₹40,673/-. In Ext.P6 also, the amount remitted by the petitioner is not credited. Ext.P6 was challenged in appeal and the appeal was allowed by Ext.P7 Government Order, specifically directing to reconsider the whole matter as shown in para 10 of Ext.P7. The petitioner alleges that by Ext.P8, without considering the same, a provisional determination order was again issued as if the petitioner is the owner. According to the petitioner, since he was laid up and under treatment as evident from Ext.P9, he could not file objection to Ext.P8. Now, Ext.P10 final determination order has been issued assessing the liability on the petitioner. This, according

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to the petitioner, is against Ext.P5 judgment of this Court and Ext.P7 order of the Government and, therefore, liable to be interfered with. Hence, this writ petition.

3. When the matter came up for hearing, the learned Standing Counsel for the 3rd respondent submitted that Ext.P10 was passed after affording the petitioner an opportunity of being heard.

4. As it appears from the face of Ext.P10 that it was a considered order, the petitioner's remedy is to file an appeal before the Government within 60 days from the date of Ext.P10.

Therefore, the writ petition is disposed of permitting the petitioner to approach the Government in appeal against Ext.P10 within the time specified. Till the appeal is considered and disposed of, coercive action against the petitioner shall be kept in abeyance.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-