



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No. 16032 of 2014
and
W.M.P. (MD) . No. 1 of 2014

Secretary,
Eraniel Sarvodaya Sangam,
Head Office,
28/92, Muttom Road,
Eraniel, Neyyoor Post,
Kanyakumari District.

.. Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
Nagercoil.
2. The Deputy Commissioner of Labour,
O/o. The Deputy Commissioner of Labour,
Palayamcottai,
Tirunelveli.
3. The Assistant Commissioner of Labour,
O/o. The Assistant Commissioner of Labour,
Palayamcottai,
Tirunelveli.
4. C.Rameshwaran

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 24.02.2014 passed by the third respondent in P.S.A Nos.13/12 and 14/12 and the consequential recovery certificate issued by him in his Proceedings No.Aa2/3877/2014, dated 07.08.2014 and quash the same as illegal.

For Petitioner	: Mr. M.E.Ilango
For Respondent Nos.1 to 3	: Mr. M.Jeyakumar Additional Government Pleader
For Respondent No.4	: Mr. G.Aravinthan



O R D E R

Heard the learned Counsel on either side.

2. The petitioner is a Sarvodaya Sangam that has been registered under provisions of the Tamil Nadu Societies Registration Act. The fourth respondent has been removed from the very membership of the petitioner's Society. In order to facilitate the conduct of the domestic enquiry against the fourth respondent, he was suspended from service. The allegation against the fourth respondent is that he misappropriated the sums which he had collected on behalf of the Society from third parties. The specific stand of the petitioner is that the fourth respondent cannot unjustly enrich himself.

3. The petitioner also took a stand that the fourth respondent was not an employee but only a member.

4. This Court is unable to agree with the stand taken by the learned Counsel for the petitioner. It is seen from the material on record that the fourth respondent was employed as the sales man of the petitioner's Society. Of course it is open to the Management to suspend the fourth respondent but then during the period of suspension the fourth respondent will have to be paid subsistence allowances. Since it was not paid, the fourth respondent filed P.S.A.No.13/12 and 14/2012 before the authority constituted under the Payment of Subsistence Allowance Act. The application filed by the fourth respondent was allowed on 24.02.2014. The petitioner filed an appeal but without making the mandate statutory deposit. Therefore, the appeal was returned. In the meanwhile, the recovery certificate dated 7.8.2014 was issued. The order passed by the original Authority as well as the recovery certificate are put to challenge in this writ petition.

5. The writ petition is liable to be dismissed on more than one ground. Firstly, when an appeal remedy has been provided for, the same should be availed in the manner known to law. The Tamil Nadu Payment of Subsistence Allowance Act, 1981, stipulates that only after making the statutory deposit the appeal will be entertained. The said requirement must be complied with. It is not open to the aggrieved parties to by-pass the said remedy by filing a Writ Petition straight away. Therefore this Writ petition is not maintainable. That apart the authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 has given a specific finding that the fourth respondent is an employee under the petitioner herein. It is a pure finding of the fact. It has not been shown that this finding is perverse. Looked at from any angle, there is no merit in this writ petition.



6. This Writ petition is dismissed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To:

1. The District Collector,
Kanyakumari District,
Nagercoil.
 2. The Deputy Commissioner of Labour,
O/o. The Deputy Commissioner of Labour,
Palayamcottai,
Tirunelveli.
 3. The Assistant Commissioner of Labour,
O/o. The Assistant Commissioner of Labour,
Palayamcottai,
Tirunelveli.
- + 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 47597
+ 1 CC TO Mr.G.ARAVINTHAN, ADVOCATE IN SR No. 47328
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47841

KMI

TE/JC/SAR-3 : 02/05/2018 : 3P/7C

ORDER MADE IN
W.P. (MD) No. 16032 of 2014
08.02.2018