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W.P(MD)Nos.15931 of 2014 & 2730 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on
26.07.2022

Orders pronounced on
03.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)Nos.15931 of 2014 & 2730 of 2021
and
M.P(MD)No.1 of 2014

1.W.P(MD)No.15931 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,
Palayamkottai,
Tirunelveli.

3.The Assistant Commissioner of Labour,
O/o. The Assistant Commissioner of Labour,
Palayamkottai,
Tirunelveli.

4.S.Mohana

... Respondents



W.P(MD)Nos.15931 of 2014 & 2730 of 2021

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, praying 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.20 of 2012 and 21 of 2012 and consequential recovery certificate issued by him in proceedings No.Aa2/3914/2014 dated 07.08.2014 and quash the same as illegal.

For Petitioner	: Mr.M.Jerin Mathew for Mr.M.E.Ilango
For RR 1 to 3	: Mr.J.John Rajadurai Government Advocate
For R - 4	: Mr.G.Aravinthan

2.W.P(MD)No.2730 of 2021:-

S.Mohana ... Petitioner

Vs

1.The District Collector,
Office of the District Collector,
Kanyakumari District.

2.The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Tirunelveli.

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

... Respondents



W.P(MD)Nos.15931 of 2014 & 2730 of 2021

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to initiate recovery of a sum of Rs.78,601/- headed for arrears due from the third respondent, together with interest at the rate of 12% per annum from 20.12.2003, towards payment of subsistence allowance due to the petitioner, as per the certificate in A2/3914/2014, dated 07.08.2014 issued by the second respondent, to implement the orders of the second respondent dated 24.02.2014 made in P.S.A.Nos.20 of 2012 and 21 of 2012 and direct to pay the same to the petitioner within a time to be fixed by this Court.

For Petitioner	: Mr.G.Aravinthan
For RR 1 & 2	: Mr.J.John Rajadurai Government Advocate
For R - 3	: Mr.V.H.S.Prathap

COMMON ORDER

W.P(MD)No.15931 of 2014 is filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the third respondent, dated 24.02.2014 in P.S.A.Nos.20 of 2012 and 21 of 2012 and consequential recovery certificate issued by him in proceedings No.Aa2/3914/2014, dated 07.08.2014.



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2. W.P(MD)No.2730 of 2021 is filed for issuance of a Writ of Mandamus, directing the first respondent to initiate recovery of a sum of Rs.78,601/- headed for arrears due from the third respondent, together with interest at the rate of 12% per annum from 20.12.2003, towards payment of subsistence allowance due to the petitioner, as per the certificate in A2/3914/2014, dated 07.08.2014 issued by the second respondent, to implement the orders of the second respondent dated 24.02.2014 made in P.S.A.Nos.20 of 2012 and 21 of 2012 and direct to pay the same to the petitioner.

3. W.P(MD)No.15931 of 2014 is filed by the Secretary, Eraniel Sarvodaya Sangam against the respondents 1 to 4 for the relief stated above.

4. W.P(MD)No.2730 of 2021 is filed by the petitioner/S.Mohana, who is the fourth respondent in W.P(MD)No. 15931 of 2014, for the relief stated above.



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5. The issues involved in both the Writ Petitions are identical and therefore, taken up together for consideration.

6. The petitioner/S.Mohana in W.P(MD)No.2730 of 2021 worked as an Assistant in the office of the third respondent/Secretary, Eraniel Sarvodaya Sangam and due to alleged irregularities, she was placed under suspension on 20.12.2003 and later she was dismissed from service. She was not paid any subsistence allowance and therefore she filed applications in P.S.A.Nos.1 of 2006 and 6 of 2007 for the period from 20.12.2003 to 16.12.2005 and from 17.12.2005 till the payment of subsistence allowance respectively. The Secretary, Eraniel Sarvodaya Sangam filed applications to reject the petitioner's claim and those applications were dismissed by the second respondent/the Assistant Commissioner of Labour. Against the said order, the third respondent/Secretary, Eraniel Sarvodaya Sangam filed a Writ Petition in W.P(MD)No.8090 of 2010 and that was also dismissed on 19.11.2010. Subsequently, the applications in P.S.A.Nos.1 of 2006 and 6 of 2007 were renumbered as P.S.A.Nos. 20 and 21 of 2012. Since the third respondent/Secretary, Eraniel Sarvodaya Sangam, dismissed the petitioner from service, the petitioner raised a dispute under the Industrial Disputes Act in



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I.D.No.91 of 2006 before the Labour Court, Tirunelveli and that was allowed on 01.06.2012 directing the third respondent/Secretary, Eraniel Sarvodaya Sangam to reinstate the petitioner/S.Mohana without backwages. The second respondent/Assistant Commissioner of Labour, Tirunelveli found that the petitioner is entitled for a sum of Rs.78,601/- as subsistence allowance. However, this amount was not paid by the third respondent/Secretary, Eraniel Sarvodaya Sangam, despite notice dated 04.07.2014 from the Assistant Commissioner of Labour. Therefore, Assistant Commissioner of Labour, by proceedings in A2/3914/2014, dated 07.08.2014 issued a certificate under Section 4 of the Payment of Subsistence Allowance Act and forwarded it to the District Collector, Kanyakumari District for recovering the sum under the Revenue Recovery Act. This Court in W.P(MD)No.13608 of 2014, by an order dated 19.03.2018, confirmed the order of reinstatement passed in I.D.No.91 of 2006. Despite all these orders in favour of the petitioner-S.Mohana, the third respondent in W.P(MD)No.2730 of 2021, namely, the Secretary, Eraniel Sarvodaya Sangam has not paid the sum of Rs.78,601/- and therefore W.P(MD)No.2730 of 2021 is filed by the petitioner/S.Mohana to implement the orders passed in P.S.A.Nos.20 of 2012 and 21 of 2012.



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7. Even before the petitioner/S.Mohana in W.P(MD)No.2730 of 2021 filed this petition, the Secretary, Eraniel Sarvodaya Sangam filed a Writ Petition in W.P(MD)No.15931 of 2014, to quash the impugned order, dated 24.02.2014 passed by the Assistant Commissioner of Labour in P.S.A.Nos.20 of 2012 and 21 of 2012 and consequential recovery certificate issued by proceedings in Aa2/3914/2014, dated 07.08.2014.

8. The grounds taken by the Society in W.P(MD)No.15931 of 2014 are that the fourth respondent/S.Mohana was not an employee of the Society and she would not come under the definition of an employee as defined under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act and the Society would fall under the definition of employer as defined under Section 2(b) of the said Act. Since there was no employer and employee relationship, the question of payment of subsistence allowance would not arise. However, without considering these aspects, the applications filed for subsistence allowance in P.S.A.Nos.20 of 2012 and 21 of 2012 were allowed and on that basis recovery certificate was issued. Thus, both the impugned order, dated 24.02.2014 and consequential recovery certificate issued by proceedings in Aa2/3914/2014, dated 07.08.2014 are to be set aside.



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9. Learned counsel appearing for the petitioner/S.Mohana in W.P(MD)No.2730 of 2021 submitted that the Writ Petition in W.P(MD)No.15931 of 2014 is not maintainable for the reason that there is an alternative remedy available by way of an appeal under the Payment of Subsistence Allowance Act. Though the Secretary, Eraniel Sarvodaya Sangam, the petitioner in W.P(MD)No.15931 of 2014 filed an appeal against the order passed in P.S.A.Nos.20 of 2012 and 21 of 2012, the appeal was filed without depositing the amount required to be deposited under the Rules. When there is an alternative remedy available and that was not pursued, filing of the writ petition in W.P(MD)No.15931 of 2014 is not maintainable. In support of his submission, he produced the order of this Court in **W.P(MD)No.16032 of 2014, dated 08.02.2018 (Secretary, Eraniel Sarvodaya Sangam Vs. The District Collector and others)**, wherein it was observed as follows:-

"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



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to the aggrieved parties to by-pass the said remedy by filing a Writ Petition straight away. Therefore, this Writ Petition is not maintainable."

10. In reply, learned counsel appearing for the third respondent Society in W.P(MD)No.2730 of 2021 submitted that the Society is defunct now and it is not in a position to pay the amount due to the petitioner and prayed that the third respondent may be permitted to pay the amount due to the petitioner in installments.

11. Considered the rival submissions and perused the records.

12. The order passed in P.S.A.Nos.20 of 2012 and 21 of 2012 shows that the claim of the Society that the petitioner/S.Mohana is not an employee and Society is not an employer was extensively considered and finding of fact was recorded on the basis of oral and documentary evidence that the petitioner/S.Mohana is an employee and the Secretary, Eraniel Sarvodaya Sangam is an employer as defined under Sections 2(a) and 2(b) of the Tamil Nadu Payment of Subsistence Allowance Act respectively. The Eraniel Sarvodaya Sangam is also an establishment as per Section 2(c) of the Tamil



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Nadu Payment of Subsistence Allowance Act. This is a finding on fact and therefore this cannot be challenged in a writ petition in W.P(MD)No.15931 of 2014.

13. Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981 permits any person aggrieved by an order passed by the authority under certain provisions to file an appeal before the Deputy Commissioner of Labour. However appeal would be entertained only if the appellant/employer deposits the amount determined and that is liable to be paid by the appellant/employer. For better understanding, the relevant portion of the Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981 is extracted hereunder:-

"5A. Appeal – (1) Any person aggrieved by the orders passed by an authority authorised under sub-section (1) of section 7 of the said Act may, within 60 days from the date of receipt of such orders, appeal to the Deputy Commissioner of Labour within the local limits assigned to him under sub-section (1) of section 15 of the Payment of Wages Act, 1936 (Central Act IV of 1936) in the form of memorandum of appeal.



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[Provided that no appeal shall be admitted unless at the time of preferring the appeal, the appellant produced a certificate from the authority against whose orders the appeal has been made to the effect that the appellant had deposited with him the amount determined by him as payable to the employee under rule 5:

Provided further that where an employer makes an appeal under rule 5-A, the authority may and if so directed by the Deputy Commissioner of Labour, pending decision of the appeal, withhold payment of any sum in deposit with him.]"

14. The records produced by the Secretary, Eraniel Sarvodaya Sangam in W.P(MD)No.15931 of 2014 show that though an appeal was filed against the order passed in P.S.A.Nos.20 of 2012 and 21 of 2012, it appears that the appeal was not filed as per Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981 and the amount determined to be paid by the employer namely, the Secretary, Eraniel Sarvodaya Sangam was not deposited before the appropriate authority. Without properly filing the appeal when the



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appeal remedy is available under the Act, which is an effective remedy, the filing of the writ petition in W.P(MD)No.15931 of 2014, in the considered view of this Court is not maintainable and therefore W.P(MD)No.15931 of 2014 is dismissed.

15. The petitioner/S.Mohana in W.P(MD)No.2730 of 2021 is entitled for a sum of Rs.78,601/- with interest at the rate of 6% per annum from 20.12.2003 till the date of payment. Therefore, this Court directs, a sum of Rs.78,601/- and interest calculated at the rate of 6% per annum from 20.12.2003 till the date of payment to be paid by the Secretary, Eraniel Sarvodaya Sangam in three equal monthly installments to the petitioner/S.Mohana in W.P(MD)No.2730 of 2021. The first, second and third installments are to be paid on 01.09.2022, 01.10.2022 and 01.11.2022 respectively. The installments amount to be paid on or before 10th of every English Calendar month. W.P(MD)No.2730 of 2021 is allowed on the above terms.



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16. In the result,

(i) W.P(MD)No.15931 of 2014 filed by the Secretary, Eraniel Sarvodaya Sangam is dismissed.

(ii) W.P(MD)No.2730 of 2021 filed by S.Mohana is allowed. The third respondent/Secretary, Eraniel Sarvodaya Sangam is hereby directed to pay a sum of Rs.78,601/- and interest calculated at the rate of 6% per annum from 20.12.2003 till the date of payment amount to be paid in three equal monthly installments to the petitioner/S.Mohana. The first, second and third installments are to be paid on 01.09.2022, 01.10.2022 and 01.11.2022 respectively. The installments amount to be paid on or before 10th of every English Calendar month.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.08.2022

Internet :Yes
Index :Yes / No
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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Deputy Commissioner of Labour,
O/o. The Deputy Commissioner of Labour,
Palayamkottai,
Tirunelveli.
- 3.The Assistant Commissioner of Labour,
O/o. The Assistant Commissioner of Labour,
Palayamkottai,
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- 4.Secretary,
Eraniel Sarvodaya Sangam,
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G.CHANDRASEKHARAN, J.

ps

Order made in
W.P(MD)Nos.15931 of 2014 & 2730 of 2021

03.08.2022