

**(2013) 01 KL CK 0159**

**High Court Of Kerala**

**Case No:** Writ Petition (C) No. 12722 of 2008

Kochu P.K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision:** Jan. 16, 2013

**Citation:** (2013) 1 KLJ 634

**Hon'ble Judges:** S. Siri Jagan, J

**Bench:** Single Bench

**Advocate:** Bimal K. Nath, M.K. Shimi, S. Jamal, E.M. Sunil Kumar and Smitha Divakaran, for the Appellant; Liju V. Strephen (GP), P. Ramakrishnan (SC) and G. Prabhakaran, for the Respondent

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### **Judgement**

S. Siri Jagan. J.

1. The petitioner was an employee of a motor transport undertaking, of which, the 4th respondent was the employer. He was enrolled as a member of the Motor Transport Workers' Welfare Fund under the Kerala Motor Transport Workers' Welfare Fund Act. After retirement from service, the petitioner approached respondents 2 and 3 for disbursal of benefits due to him from the Fund. Respondents 2 and 3 took the stand that the same cannot be paid, since the 4th respondent had not paid the contributions due in respect of the petitioner under the Act. The 4th respondent had challenged the final determination orders passed by the 2nd respondent in respect thereof in an appeal before the 1st respondent, where there was a stay. Therefore, unless the contributions are recovered, benefits due to the petitioner cannot be disbursed was the stand of respondents 2 and 3. According to the petitioner, the petitioner cannot be prejudiced because of non-payment of contributions by the 4th respondent as it is the statutory duty of respondents 2 and 3 to recover the amounts from the 4th respondent and to disburse the benefits due to the petitioner from the Fund. A statement has been filed by respondents 2 and 3 taking the stand that without receiving contributions in respect of the petitioner under the Act from the 4th respondent, they are not liable

to pay benefits due to the petitioner out of the fund, although he is a registered member of the Fund.

2. The 4th respondent has filed a counter affidavit taking the stand that he is not liable to pay any amounts to respondents 2 and 3 in respect of the petitioner.

3. I have considered the rival contentions in detail.

4. On 30.5.2008, I passed the following interim order in this writ petition:

Standing counsel for the respondents 2nd and 3 have filed a statement to the effect that the welfare fund benefits from the Motor Transport Workers' Welfare Fund of the petitioner are not disbursed only because the recovery proceedings pursuant to the final deterioration orders served on the employer of the petitioner have been stayed by the Government in appeal. According to him, without realising contributions under the Act in respect of the petitioner, benefits due to the petitioner cannot be disbursed. Learned Govt. Pleader shall get instructions from the Government as to why the appeal filed by the employer is not yet disposed of. Post after two weeks. The proportionate benefits due to the petitioner as per the amounts already realised shall be disbursed to the petitioner within two weeks from the date of receipt of a copy of this order.

It is now submitted by the learned counsel for respondents 2 and 3 that amounts have been paid as per the interim order and the appeal filed by the 4th respondent against the final deterioration orders was also dismissed as early as on 24.12.2009. But, when respondents 2 and 3 approached the concerned District Collector for revenue recovery proceedings for recovery of the amounts due from the 4th respondent, they refused to accept the requisition on the ground that only on-line request would be entertained. The stand of the revenue recovery authorities is amusing. Both are Government departments. It is for the Government to provide computers and Internet facilities to the offices of respondents 2 and 3 for enabling them to make on-line requests. The learned Standing Counsel for respondents 2 and 3 submits that no computer facility has been provided to the offices of respondents 2 and 3. If that be so, I fail to understand how the revenue recovery authorities can take the stand that for initiating revenue recovery proceedings only on-line request would be entertained.

It is the bounden duty of respondents 2 and 3 to see that contributions due in respect of the employees covered under the Act are recovered from the employer by coercive means, if necessary. It is also the duty of the revenue recovery authorities to recover the dues from the 4th respondent at the request of respondents 2 and 3. In the above circumstances, the writ petition is disposed of with the following directions:

If respondents 2 and 3 submit a request for revenue recovery proceedings for recovery of the amounts due from the 4th respondent, in writing, to the concerned

District Collector/Tahsildar, along with a copy of this judgment within two weeks from today, the same shall be accepted by the concerned officer without insisting on an on-line request for the same. Thereupon, the revenue recovery authorities shall see that the amounts due from the 4th respondent are recovered within a period of three months from the date of the request. The balance amounts due to the petitioner under the Act from the Fund shall be paid to him, as expeditiously as possible, at any rate, within one month therefrom.