IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

Ins.APP.No. 4 of 2011 ( )

(AGAINST THE JUDGMENT IN IC 2/2009 of EMPLOYEES INSURANCE COURT, ALAPPUZHA, DATED 13-05-2010)

APPELLANT/RESPONDENT:-

THE REGIONAL DIRECTOR,
E.S.I. CORPORATION, PANCHADEEP BHAVAN, THRISSUR-20.

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

RESPONDENT/APPLICANT:-

P.R.DINESH,
PARTNER, NEW WOODLANDS LODGE,
M.G.ROAD,
ERNAKULAM,
COCHIN-682 011.

BY ADV. SRI.E.K.NANDAKUMAR

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

= = = = = = = = = = = = = = = = = =
Insurance Appeal No.4 of 2011.
= = = = = = = = = = = = = = = = = =

Dated this the 16th day of January, 2015.

JUDGMENT

The Regional Director of Employees State Insurance Corporation ('the Corporation' for short), has come up in this appeal challenging the decision of the Employees' Insurance Court, Alappuzha in I.C.No.2 of 2009. The respondent was the applicant in the said proceeding.

2. The case of the respondent before the Insurance Court was that during 1997, proceedings were initiated by the Corporation against them alleging that they are liable to pay contribution under the Employees State Insurance Act ('the Act' for short). It is stated that the said proceedings were though challenged by the respondent before the Insurance Court in I.C.No.97 of 1998, their contention was not accepted by the Insurance Court. According to them, the decision of the Insurance Court in I.C.No.97 of 1998 was challenged by them before this Court in MFA.No.313 of

1990 and this Court confirmed the decision of the Insurance Court. It is stated that thereafter when the impugned proceedings were restored, they paid the disputed amount, viz., Rs.15,041.25 to the Corporation. According to them, after having paid the amount demanded by the Corporation, they challenged the decision of this Court in MFA.No.313 of 1990 before the Apex Court and the Apex Court remitted the matter for fresh consideration by this Court. Pursuant to the decision of the Apex Court, this Court considered the matter afresh and as per judgment dated 17.1.1992, remitted the matter to the Insurance Court for de novo enquiry. The Insurance Court, thereupon found that the respondent is not liable to pay any amount. Thereafter, the present application has been filed by the respondent seeking a declaration that the collection of Rs.15,041.25 from them by the Corporation as contribution is illegal and without jurisdiction and that they are entitled to get the said amount refunded with interest at 15% per annum.

3. The Corporation filed a written objection contending that they are liable only to pay the amount collected by them as indicated in the application and that they are not liable to pay interest for the same.

4. The Insurance Court, on an elaborate consideration of materials on record, found that in so far as the Corporation is collecting interest for delayed payment of contributions, they are liable to pay interest for the amount collected otherwise than in accordance with the provisions of the Act at the same rate at which they are collecting interest for the dues. Accordingly, the application was allowed and it was declared that the respondent is eligible to get refund of Rs.15,041.25 deposited by them with interest at the same rates at which the respondent has been charging interest. It is aggrieved by the said decision of the Insurance Court that the Corporation has come up in this appeal.

5. Heard the learned Standing Counsel for the appellant as also the counsel for the respondent.

6. It is pointed out by the learned counsel for the appellant that the amount collected as indicated by the respondent in the application has already been refunded and what is due is only the interest directed to be paid by the Insurance Court. According to the learned counsel, there is no provision which enables the respondent to claim interest for the amount deposited otherwise then in accordance with the provisions of the Act and therefore, the Corporation is not liable to pay interest for the same.

7. It is beyond dispute that the Corporation is empowered to collect interest for the delayed payment of contributions payable under the Act. True, there is no provision in the Act which obliges or mandates the Corporation to pay interest for the amount collected otherwise than in accordance with the provisions of the Act. Regulation 40 of the Employees' State Insurance (General) Regulations, 1950 dealing with the refund of contributions erroneously paid only provides that the amount liable to be refunded may be refunded without interest to the person

concerned. The said Regulation does not deal with contributions erroneously collected by the Corporation. Section 144 of the Code of Civil Procedure dealing with restitution is relevant in the context. Section 144 reads thus:

> "144. **Application for restitution**: (1) Where and in so far as a decree or an order is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or [such part thereof as has been varied, reversed, set aside or modified] and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly [consequential on such variation, reversal, setting aside or modification of the decree or order.]
>
> [Explanation.- For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,-
>
> (a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

> (b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;
>
> (c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]
>
> (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)."

In the absence of any provision in the Act, I am of the view that the principles contained in Section 144 of the Code can be applied to the cases where the Corporation had to refund the amount collected otherwise than in accordance with the act. Section 144 of the Code provides that when an order is reversed in appeal, the court which passed the order shall, on the application of any party entitled to any benefit by way of restitution, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such order and, for this purpose, the court may make any orders, including orders for payment of interest. In the aforesaid view of the matter, there is no illegality whatsoever in the order impugned in this appeal. The appeal is devoid of merit and the same is dismissed.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-

// true copy //

PA TO JUDGE.