

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WA.No. 1587 of 2015 () IN WP(C).30548/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 30548/2014 of HIGH COURT OF KERALA
DATED 18-11-2014

APPELLANT(S)/RESPONDENTS 1 TO 3::

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO GOVT. OF INDIA
MINISTRY OF LABOUR & DEPARTMENT OF EMPLOYMENT
NEW DELHI 110 001.

2. REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORFGANISATION (EPFO)
BHAVISHANIDHI BHAVAN, PATTOM PALACE
THIRUVANANTHAPURAM, PIN 695 004.

3. ASSISTANT PROVIDENT FUND COMMISSIONER
SUB REGIONAL OFFICE
EMPLPOYEES PROVIDENT FUND ORGANISATION(EPFO)
BHAVISHANIDHI BHAVAN, ERANJIPALAM, KOZHIKODE 673 006

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SMT.T.N.GIRIJA, SC,EPF ORGANISATION

RESPONDENT(S)/PETITIONER AND 5TH RESPONDENT:

1. DR. JAYACHANDRAN
'SOBHA', MRA/A69, TC 32/1907
MARUTHANKUZHI, KANJIRAMPARA PO
THIRUVANANTHAPURAM 695 030.

2. MALABAR REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD
REPRESENTED BY ITS MANAGING DIRECTOR, PERIMANGALAM PO
KUNNAMANGALAM, KOZHIKODE 673 571.

R1 BY SMT.LATHA KRISHNAN
R2 BY SRI.P.N.MOHANAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.**

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W.A. Nos. 1587, 1590 and  
1592 of 2015

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Dated, this the 6th day of August, 2015

JUDGMENT

Ramachandra Menon, J.

The learned counsel for the appellants in W.A. No. 1590 of 2015 submits that exactly similar matters have already been admitted by this Court by way of W.A. Nos. 1587 and 1592 of 2015. As agreed by both the sides, all these matters were taken up together (other two matters having been listed before this Court as item No. 407 in today's cause list). The pleadings and proceedings are referred to as given in Writ Appeal No. 1590 of 2015.

2. The writ petitioners are the employees of the respondent Regional Co-operative Milk Producers' Union and subscribers of Employees Provident Fund and Employees Pension Scheme 1995. In fact, their pension contributions were being made with respect to salary ceiling as Rs.6,500/- p.m. in terms of Clause 11 (3) of the Scheme. Subsequently, by virtue of amendment to Clause 11(3), adding a 'proviso' to the effect that pension contribution could be made on the basis of actual salary, a declaration was made by this

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Court in W.P.(C) No. 6643 of 2007 and connected cases, as per Ext.P2 judgment, to the effect that the 'proviso' will be operative right from the date of commencement of the Scheme i.e. 16.11.1995. The said verdict was confirmed in appeal, as borne by Ext. P3 judgment dated 05.03.2013 in W.A. Nos. 568 of 2012 and connected cases. It was accordingly, that the Regional Milk Producers' Union effected deduction and deposit on the basis of the actual salary drawn by the writ petitioners since joining in the Scheme. The petitioners being aggrieved of the negative stand and the course and events pursued by the Provident Fund Department, approached this Court by filing W.P.(C) No. 25435 of 2014 with the following prayers :

"(i) Issue a writ of mandamus or any appropriate writ, order or direction, directing the 1st and 2nd respondents to collect pension contribution towards the E.P.F. Pension Scheme of the petitioners on the basis of actual salary drawn by them, in terms of proviso to Cl. 11(3) of the pension Scheme from the date of joining the pension Scheme.

(ii) Declare that petitioners are entitled to get pension contribution towards the E.P.F. Pension Scheme of the

petitioners on the basis of actual salary drawn by them, in terms of proviso to Cl.11(3) of the pension scheme, from the date of joining the pension Scheme.

(iii) Grant such other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.

The learned single Judge, based on the verdicts already passed, particularly, by virtue of the affirmation made by the Division Bench, granted relief and the writ petition was disposed of in the following terms :

"5. Following the binding precedents, this writ petition is also disposed of directing that the 8.33% of the employer's contribution, proportionate to the salary of the employee, in excess of Rs.6,500/-, shall now be credited to the Pension Scheme and orders passed in accordance with law. Needless to say the interest accrued in the Provident Account to that extent also will stand transferred to the Pension Account.

6. The extant employees shall also submit joint applications,, along with their employer wherever the same has not been done. The directions above noted shall be complied within three months from the date of receipt of a certified copy of this judgment."

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3. The learned standing counsel for the Provident Fund Department submits that the issue is now pending consideration before the Apex Court by way of S.L.P. No. 16867 of 2013 and connected cases, including S.L.P. No. 7075 of 2014. The learned standing counsel further submits that an interim stay was granted by the Apex Court on 09.07.2015, which however is sought to be clarified by the learned counsel appearing for the party respondents stating that the said order is in respect of the Contempt of Court proceedings, being pursued in the meanwhile.

4. Sri. P.N. Mohanan, the learned standing counsel appearing for the Ernakulam Regional Co-operative Milk Producers' Union submits that, in many cases, the authorities of the Provident Fund already implemented the order. A copy of the order bearing No. KR/KKD/14754/4039/11299/AB-5(5)/2015 dated 22.07.2015 issued by the Assistant Provident Fund Commissioner in this regard is placed for consideration of this Court. It is also pointed out that, similar writ appeals have already been disposed of, reserving the rights and liberties of the Provident Fund Department to proceed with further steps, subject to the fate of the proceedings now

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pending before the Apex Court. Copies of the relevant verdicts, viz. judgment dated 05.03.2013 in W.A. No. 1137 of 2012, judgment dated 16.10.2014 in W.A. 1442 of 2014 and judgment dated 07.01.2015 in W.A. 1956 of 2014, are also placed for consideration of this Court.

5. This Court finds that the issue projected in these writ appeals would stand governed by the verdict to be passed by the Apex Court, on the question of law. This being the position, it is not at all necessary to keep these writ appeals pending before this Court and all these matters can be disposed of, in terms of the verdicts already passed by the Benches of this Court, subject to the rider that the appellant would be free to proceed with further steps against the party respondents based on the verdict to be passed by the Apex Court in the matters which are pending consideration.

In the above circumstances, these writ appeals are disposed of, in terms of the verdicts as aforesaid, with liberty to the appellants to proceed with further steps against the concerned respondents, based on the verdict to be passed by the Apex Court

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in the matters which are stated as pending consideration.
Implementation of the verdicts under challenge will be subject to
the outcome of the proceedings as above.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**SUNIL THOMAS,
JUDGE**

kmd