

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WA.No. 2077 of 2015 () IN WP(C).4335/2015

AGAINST THE JUDGMENT IN WP(C) NO.4335/2015 of HIGH COURT OF KERALA DATED 11.02.2015.

APPELLANT(S)/RESPONDENTS 2 TO 5:

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF LABOUR AND EMPLOYMENT, DEPARTMENT OF EMPLOYMENT,
NEW DELHI- 110 001.
2. CENTRAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION, HEAD OFFICE,
BHAVISHYA NIDHI BHAVAN, NEW DELHI-110 066.
3. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION (EPFO), MINISTRY OF LABOUR,
GOVERNMENT OF INDIA, PATTOM, THIRUVANANTHAPURAM- 695 001.
4. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION (EPFO),
SUB REGIONAL OFFICE, ERANHIPALAM, KOZHIKODE-673 006.
5. REGIONAL PROVIDENT FUND COMMISSIONER,
BHAVISHYANIDHI BHAVAN, KALOOR, KOCHI-673 006.

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

RESPONDENT(S)/PETITIONERS & 6TH RESPONDENT:

1. C.P.RADHAKRISHNAN,
S/O LATE U. RAMACHANDRAN NAIR, KRISHNA PREETHI,
L4-28, HOUSING COLONY, KOZHIKODE-673 001.

P.T.O.

WA.No. 2077 of 2015 () IN WP(C).4335/2015 :-2-:

2. P.V. BALAGOPAL,
S/O LATE VASUDEVA MENON, 23/1637 A, VAISNAVAM,
KALLAI P.O., CALICUT-673 003.
3. C.SAMIKUTTY,
S/O. PIRUNGAN, CHERUKKADAN PARANBATH, VALYANNUR PO, CHERUPPA
CALICUT, 673 661.
4. KERALA CO-OPERATIVE MILK MARKETING FEDERATION LTD,
HEAD OFFICE, MILMA BHAVAN, PATTOM, THIRUVANANTHAPURAM-4,
REPRESENTED BY ITS MANAGING DIRECTOR.

R BY SMT. LATHA KRISHNAN
R BY SRI.V.V.NANDAGOPAL NAMBIAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

W.A. No.2077 of 2015

Dated this the 23rd day of September, 2015

JUDGMENT

Surendra Mohan, J.

The appellants challenge the judgment of the learned Single Judge dated 11.02.2015 in W.P.(C) No.4335 of 2015.

2. Respondents 1 to 3 who are employees of the 4th respondent, had filed the Writ Petition seeking *inter alia*, a direction to the appellants to permit them to enjoy higher pensionary benefits as per the Employees Pension Scheme by computing pension contributions on the basis of their actual pay in excess of the ceiling limit and transferring contributions computed on the said basis to the Pension Fund. Respondents 1 to 3 are employees of the fourth respondent. They are covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1995.

3. At the time of promulgation of the Pension Scheme, there was a ceiling limit on the maximum pensionable salary, which was Rs.6,500/- per month. Therefore, contributions

towards the Pension fund were payable only on the said amount even in cases where the actual salary drawn by an employee was much higher. The said restriction has subsequently been removed.

4. In the present case, it is admitted that contributions at the rate of 12% of the salaries of the employees together with an equal contribution of the employer, have been remitted to the Employees Provident Fund Organisation. However, only contributions computed at the rate of 8.33% of the maximum salary of Rs.6,500/- have been remitted to the Employees Pension Fund. The balance amount has been retained by the Employees Provident Fund Organisation. The above action according to respondents 1 to 3 is not authorised by the Statute. The cut off date of 01.12.2004 stipulated for extending the benefits of removal of the ceiling limit on salary is also attacked as arbitrary. The learned Single Judge has found in favour of respondents 1 to 3 on all the points and has allowed the Writ Petition.

5. Heard. The learned Single Judge has allowed the Writ Petition following the dictum of a Division Bench of this Court in another Writ Appeal. We notice that the issue has

been conclusively decided by this Court in judgment dated 05.03.2013 in W.A.No.1137 of 2012, judgment dated 16.10.2014 in W.A.No.1442 of 2014 and judgment dated 07.01.2015 in W.A.No.1956 of 2014. A copy of judgment dated 06.08.2015 in W.A.No.1587 of 2015 has also been placed before us. It is also pointed out that the issue is pending consideration of the Apex Court in S.L.P Nos.16867 of 2013 and 7075 of 2014 besides, other connected cases at the instance of the appellants herein.

6. In view of the binding precedents of this Court on the point, we find no infirmity in the judgment appealed against. We note that the learned Single Judge has taken care to make his orders and directions subject to the decision of the Apex Court in the matter. Therefore, no further directions are necessary to be issued in the said regard also.

In view of the above, this Writ Appeal is dismissed.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-