

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WA.No. 1671 of 2014 () IN WP(C).13742/2014

(AGAINST THE ORDER/JUDGMENT IN WP(C) 13742/2014 of HIGH COURT OF
KERALA DATED 05-06-2014)

APPELLANTS/RESPONDENTS 2 AND 4.:

1. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
MINISTRY OF LABOUR, GOVERNMENT OF INDIA,
PATTOM, THIRUVANANTHAPURAM - 695 004.
2. PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE,
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
BHAVISHYANIDHI BHAVAN, KALOOR,
ERNAKULAM.

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

RESPONDENTS/PETITIONERS & RESPONDENTS 1 AND 3:

1. SHAHUL HAMEED M.
SITHARA, MANKKAPARAMBIL NETTOOR P.O.,
ERNAKULAM - 682 -040
2. MOHANDAS K.,
SAROVAR, NEAR POLICE HEADQUARTERS.
KALLEKULANGARA, PALAKKAD - 678 009.
3. K.T. RARICHAKUTTY RAJ,
MAHALAKSHMY HOUSE, MAKKADA P.O.,
KAKKODI (VIA),
KOZHIKODE DISTRICT - 673 617
4. S. MOHANDAS, THIRUVATHIRA,
MRA 21 UMA HALL, KIZHUVILAM P.O.,
MAMOM, ATTINGAL, THIRUVANANTHAPURAM

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5. CHANDRASENAN R.V.,
VILAYIL PUTHEN VEEDU,
PUTHIYAKAVU, KILIMANOOR P.O
THIRUVANANTHAPURAM. - 695 601.
6. K. SUMANGI, PRIYA NIVAS,
NEAR PRESIDENT JUNCTION, CHENNANCODE,
VADASSERIKONAM P.O.,
THIRUVANANTHAPURAM - 695 143.
7. S. ANANTHA RAMAN, SIVAM,
VILABHAGOM, NEDUMANGAD P.O.,
THIRUVANANTHAPURAM - 695 307
8. C.S. VARGHESE, KRIPA,
MALLIKA, THATTAYIL P.O.,
PATHANAMTHITTA - 691 525
9. K. RAVEENDRA NATH, CHAITANYA,
MELOOD P.O., ADOOR,
PATHANAMTHITTA - 691 523.
10. K. IDICHANDY, KACHANETHU BINU SADNAM,
PANNIVIZHA , ADOOR P.O.,
PATHANAMTHITTA.
11. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO GOVT. OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT
DEPARTMENT OF EMPLOYMENT
NEW DELHI - 110001
12. KERALA STATE FINANCIAL ENTERPRISES LTD.,,
REPRESENTED BY ITS MANAGING DIRECTOR, THRISSUR -680 020.

R11 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R12 BY SRI.M.GOPIKRISHNAN NAMBIAR
R1 TO R10 BY SRI.P.N.MOHANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-09-2015,
ALONG WITH WA. 1830/2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

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W.A.Nos.1671 & 1830 OF 2014
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Dated this the 18th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

The writ petitioners are retired employees of the respondent Kerala State Financial Enterprises Limited and are subscribers to the Employees Provident Fund and Employees Pension Scheme 1995. In fact, their pension contributions were being made with reference to the ceiling of salary as Rs.6,500/- p.m. in terms of Clause 11 (3) of the Scheme. Subsequently, by virtue of the 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 in W.P.(C) No. 6643 of 2007 and connected cases, as per Ext.P4 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. P5 judgment dated 05.03.2013 in W.A. Nos. 568 of 2012 and connected cases. It

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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.

2. The petitioners, being aggrieved of the stand and the course and proceedings pursued by the Provident Fund Department, filed 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.

3. 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

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three months from the date of receipt of a certified copy of this judgment."

4. 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.

5. It is brought to the notice of this Court 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 pending before the Apex Court. Copies of the relevant verdicts, viz.judgment dated 16.10.2014 in W.A. 1442 of 2014 and 1419 of 2014 are also placed for consideration of this Court.

6. After hearing, 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 appeals pending before this Court and both these matters can be disposed of, in terms of the verdicts already passed by this

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Court, subject to the rider that the appellants would be free to proceed with further steps against the party respondents, based on the law to be asserted 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 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.

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

**K. HARILAL,
JUDGE**

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