IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WA.No. 1972 of 2014 IN WP(C).5457/2014
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AGAINST THE JUDGMENT IN WP(C) 5457/2014 of HIGH COURT OF KERALA
DATED 04-03-2014

APPELLANT(S)/RESPONDENTS 2 AND 3:
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1. REGIONAL PROVIDENT FUND ORGANISATION,
REPRESENTED BY THE CHIEF PROVIDENT FUND COMMISSIONER
BHAVISHYANIDHI BHAVAN, 14, BHIKAJI CAMA PALACE,
NEW DELHI - 110 066.

2. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO), PATTOM
THIRUVANANTHAPURAM - 695 004.

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

RESPONDENT(S)/PETITIONER & RESPONDENTS 4 AND 1::
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1. JAYASREE V
ASSISTANT MANAGER (RETD.), W/O.P.V.SETHUMADHAVAN
PUTHENVEETIL HOUSE, NO.28/1795, THOTTUMGATHARA ROAD,
KADAVANTHRA P.O., ERNAKULAM - 682 020.

2. KERALA STATE FINANCIAL ENTERPRISES LTD.,
'BHADRATHA' MUSEUM ROAD, P.B.NO.510, THRISSUR - 680 020
REP. BY ITS MANAGING DIRECTOR.

3. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVT. OF INDIA,
MINISTRY OF LABOUR & EMPLOYMENT DEPARTMENT,
NEW DELHI.

R1 BY ADV. SRI.SHAJI P.CHALY
R1 BY ADV. SMT.K.S.SUMITHA
R1 BY ADV. SMT.K.JASMIN BABY
R1 BY ADV. SRI.S.GOPAKUMAR
R1 BY ADV. SRI.R.SANJITH
R1 BY ADV. SMT.C.S.SINDHU KRISHNAH
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R BY SRI.M.GOPIKRISHNAN NAMBIAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-01-2015, ALONG WITH W.A.No.1993/14, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**V.K.MOHANAN & P.D.RAJAN, JJ.**

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**W.A.Nos.1972 & 1993 of 2014**

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**Dated this the 5th day of January, 2015.**

**J U D G M E N T**

**Mohanan, J.**

As the question of facts and law involved in the above writ appeals are identical, we heard the above writ appeals together and being disposed by this common judgment.

2. As per the impugned judgment, in all the writ appeals, while disposing of the writ petitions, the learned Single Judge directed that 8.33% of the employer's contribution, proportionate to the salary of the employee, in excess of Rs.6,500/-, should be credited to the Pension Scheme and orders passed in accordance with law. It was also made clear that the interest accrued in the Provident Fund Account to that extent also would stand transferred to the Pension Account. With respect to the retired employees, who had drawn their retirement benefits by way of Provident Fund proportionate amounts along with interest

accrued in the account as also that accrued after the withdrawal of the Provident Fund amounts, have to be refunded to the Provident Fund Organization and further directed that the extant employees and those retired shall also submit joint applications along with their employer wherever the same has not been done and it is also directed that the directions so issued shall be complied within three months from the date of receipt of a certified copy of the judgment. It is against this judgment, the Regional Provident Fund Commissioner has come up in appeal by filing the above writ appeals.

3. Heard the learned counsel for the appellants as well as the counsel for the respondents.

4. During the course of hearing, the learned counsel for the appellants as well as the learned counsel for the contesting respondents submitted that in an identical matter, another Division Bench of this Court has disposed of several writ appeals by a common judgment in W.A.

Nos.1439, 1440, 1441 & 1442 of 2014 and the learned counsel appearing for the appellants handed over to us a copy of the said judgment dated 16/10/2014 in the above writ appeals and the learned counsel appearing for both the appellants as well as the respondents submitted that these writ appeals can be disposed of in terms of the above judgment. At this juncture it is relevant to note that by a common judgment dated 18.12.2014 in W.A.Nos.1903, 1904 and 1905 of 2014, this Court has also disposed of identical appeals.

5. The above common judgment was passed on the basis of the judgment in W.A. No.1419 of 2014 and for the sake of convenience, the relevant portions of the judgment in W.A. No.1419 of 2014 are extracted hereunder:

> "The Writ Appeal is filed challenging the judgment of the learned single Judge in W.P.(C) No.12855 of 2014. Hereinafter, the parties are referred to as per their rank in the Writ Petition.
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> 2. The petitioner was working as Assistant Manager in the Kerala State Financial Enterprises Limited (respondent No.4). He retired from service on attaining the age of superannuation on 28.2.2009. The

employees of the fourth respondent are covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'EPF Act') and the Employees' Pension Scheme, 1995 (hereinafter referred to as 'Pension Scheme of 1995').

3. Para 11(3) of the Pension Scheme of 1995 was amended with effect from 16.3.1996. For the sake of convenience, para 11(3) is extracted below:

"11. Determination of pensionable salary.-- (1)....

(2) .......

(3) The maximum pensionable salary shall be limited to rupees six thousand and five hundred/Rs.6,500 per month:

Provided that if at the option of the employer and employee, contribution paid on salary exceeding rupees six thousand and five hundred/Rs.6,500 per month from the date of commencement of this Scheme or from the date salary exceeds rupees six thousand and five hundred/Rs.6,500 whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary."

It is to be noted that in sub-para (3) of paragraph 11, the maximum pensionable salary was at ₹5,000/- and it was enhanced to ₹6,500/- as per the amendment which came into force with effect from 1.6.2001.

4. The Provident Fund Organisation took the view that the benefit of the proviso to para 11(3) of the Pension Scheme of 1995 would be applicable only till 1.12.2004. The Provident Fund Organisation in some cases took a contrary view and invited the employees to

contribute to the employees' provident fund even after the cut off date so as to enable them to claim the benefit of the proviso to para 11(3) of the Pension Scheme of 1995. The view taken by the Provident Fund Organisation that the cut off date of 1.12.2004 will apply was negatived in the judgment of this Court in W.P.(C) Nos.6643 and 9929 of 2007 (Ext.P3). Ext.P3 judgment was confirmed by the Division Bench in W.A.No.1137 of 2012 (Ext.P4). The judgment of the Division Bench was relied on in several other cases. In W.P.(C) No.19881 of 2013, in the case of a retired employee and who was drawing above ₹6,500/-, another learned Single Judge of this Court held that the employee was entitled to exercise option even beyond the cut off date prescribed by the Provident Fund Organisation. It was also held in all the judgments referred to above that the cut off date prescribed (1.12.2004) was without jurisdiction. It was also held that the proviso to para 11(3) of the Pension Scheme of 1995 is intended to be operative retrospectively from the date of commencement of the Scheme and, therefore, employees are entitled to the benefit of the proviso if they are able to make good the arrears of contribution. It was also noticed in the judgment of the learned Single Judge in W.P.(C) Nos.6643 and 9929 of 2007 that the Provident Fund Organisation was not able to produce any document justifying fixing of a cut off date and that the EPF Act, Employees' Provident Fund Scheme and the Pension Scheme do not contain any provision enabling the Provident Fund Organisation to fix a cut off date for the purpose of availing the benefit of the proviso to para 11(3) of the Pension Scheme of 1995.

5. It is stated in the Writ Appeal that challenging the judgment in W.A.No.1137 of 2012, the Provident Fund Organisation has filed S.L.P.No.16867 of 2013 before the Honourable Supreme Court.

6. In the present case, the learned Single Judge relied on the judgment of the Division Bench in W.A.No.1137 of 2012 and granted the reliefs in favour of the petitioner. (However, it is seen that in the operative portion of the judgment instead of the third respondent, it is mentioned as fourth respondent.)

7. The employees are liable to contribute 12% of their salary to the Employees' Provident Fund Account. The employer is also liable to contribute such 12%. Out of such contribution, 8.33% of the salary shall be transferred to the Employees' Pension Fund Scheme Account. If an employee had exercised the option within the cut off date as prescribed by the Provident Fund Organisation, such an employee cannot be denied pension taking into account the benefit resulting from the contribution in respect of the salary above ₹ 6,500/-. Persons like the petitioner were denied the benefit of the welfare legislation on technical grounds. The learned Single Judge as well as the Division Bench held that the view taken by the Provident Fund Organisation was not justifiable. In other Writ Petitions also, similar view was taken. However, it is submitted that the judgment of the Division Bench is under challenge before the Supreme Court. That by itself need not deter this Court from disposing of the several other similar matters pending before this Court. It would be sufficient if the interest of the Provident Fund Organisation is protected. It is agreed

> by the learned counsel appearing for the writ petitioner that in case the Supreme Court takes a contrary view, the writ petitioner is prepared to disgorge all the benefits which he enjoyed as per the direction issued by the learned Single Judge in the Writ Petition which is under challenge in this Writ Appeal. Based on the decision of the Supreme Court, the Employees' Provident Fund Organisation would be entitled to get the accounts reworked and the pension recomputed and, for that purpose, we hold that it would be sufficient for the Employees' Provident Fund Organisation to file a memo in this Writ Appeal. In such an eventuality, the Writ Appeal will be posted for further orders. By adopting such a course, the interests of the writ petitioner and that of the Employees' Provident Fund Organisation would be protected. In the peculiar facts and circumstances of the case, we grant four months' time to the appellant to comply with the directions issued by the learned Single Judge".

6. In view of the above referred common judgment dated 16/10/2014 in W.A. Nos.1439, 1440, 1441 & 1442 of 2014 and the judgment in W.A.No.1419 of 2014 and the common judgment dated 18.12.2014 in W.A.Nos.1903, 1904 and 1905 of 2014, these writ appeals are disposed of in the same line. It is also made clear that the observations and directions contained in the judgment in W.A.No.1419

of 2014 will apply to the parties in these writ appeals as well.

7. Considering the peculiar facts and circumstances of these cases, we grant four months time from today to the appellants to comply with the directions issued by the learned Single Judge.

These writ appeals are disposed of as above.

Sd/-
**V.K.MOHANAN, Judge**

Sd/-
**P.D.RAJAN, Judge**

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P.A.to Judge