IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 322 of 2015 (M)
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PETITIONERS :
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1. RAVINDRAN C.,
   LEENA NIVAS, P.O. KAPPAD, CANNANORE

2. SELVEN FERNANDEZ,
   MARGRAT VILLA
   PAPPINISSERY P.O., PAPPINISSERI-670565.

3. D. SEBASTIAN
   SUNNY VILLA, MURUGANI CN PURAM, PALAKKAD

4. UDAYABHASKAR
   VAYSHNAV DURGA NAGAR, PUTHUR, PALAKKAD

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS :
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1. UNION OF INDIA (UOI)
   REPRESENTED BY THE SECRETARY TO GOVT. OF INDIA
   MINISTRY OF LABOUR & DEPARTMENT OF EMPLOYMENT
   NEW DELHI-110 001.

2. REGIONAL PROVIDENT PROVIDENT FUND COMMISSIONER
   EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
   BHAVISHANIDHI BHAVAN, PATTOM PALACE
   THIRUVANANTHAPURAM, PIN-695004

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

4. MALABAR REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD
   REPRESENTED BY ITS MANAGING DIRECTOR, PERINGALAM P.O.
   KUNNAMANGALAM, KOZHIKODE -673571

R1 BY ADV. SRI.N.NAGARESH, ASGI
R2 & R3 BY SMT. T.N.GIRIJA, SC
BY SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**WP(C).No. 322 of 2015 (M)**
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## APPENDIX

**PETITIONERS' EXHIBITS :**
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**EXT. P1:-** A TRUE COPY OF THE CIRCULAR NO. PENSION/MISL/2005 ISSUED BY THE 2ND RESPONDENT.

**EXT. P2:-** A TRUE COPY OF THE LETTER NO KR/TVM/PEN.CELL(4) KMML.KR/10315/2007 DTD 20/2/2007.

**EXT. P3:-** A TRUE COPY OF THE JUDGMENT DTD. 4/11/2011 IN WPC NO 6643/2007.

**EXT. P4:-** A TRUE COPY OF THE JUDGMENT DTD 5/3/2013 IN WRIT APPEAL 1137/2012.

**EXT. P5:-** A TRUE COPY OF THE JUDGMENT DTD 4/3/2014 IN WPC NO 2059/2014.

**EXT. P6:-** A TRUE COPY OF THE JUDGMENT DTD 5/6/2014 IN WPC NO 8298/2014.

**EXT. P7:-** A TRUE COPY OF THE ORDER DTD. 31/10/2013 OF THE ASST. P. F. COMMISSIONER.

**RESPONDENT(S)' EXHIBITS : NIL**
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**//TRUE COPY//**

**P.S. TO JUDGE**

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**K. VINOD CHANDRAN, J.**

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**W.P.(C) No.322 of 2015 - M**

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**Dated this the 7th day of January, 2015**

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

I have heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the respondents 2, and 3, the learned Assistant Solicitor General appearing for the 1st respondent and the learned Standing Counsel appearing for the 4th respondent.

2. The petitioners in the Writ Petition are the retired employees of the 4th respondent. Admittedly, the petitioners are covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1995. The petitioners had salary above Rs.6500/-, and are stated to have exercised an option under Section 26(6) of the Act. However, the Provident Fund Organization disputes the exercise of joint option by the employer and the employee; and asserts that it has not been done.

3. Be that as it may, it is admitted that the contribution to the Provident Fund being 12% of the total salary deducted as employees contribution and the 12% paid by the employer, were remitted to the Organization. As per the provisions of the Pension Scheme 8.33% of the contribution from the employer, is to be deducted and credited to the Pension Fund. However, in making such deduction, the Provident Fund Organization limited it to 8.33% of the maximum salary provided, ie., Rs.6500/-. The balance contribution made by the employer for the salary in excess of Rs.6,500/-, was fully retained in the Provident Fund Account itself.

4. The petitioners contend that such a retention was made by the Organization without reference to the statute. The cut-off date prescribed being 01.12.2004 is also against the statutory provisions and does not have any nexus with the object sought to be achieved, is the argument. This Court has by judgment in W.P.(C) Nos. 6643 & 9929 of 2007, dated 04.11.2011, held that the cut-off date

prescribed is without jurisdiction and that the Organization could not have retained the 8.33% of the employer's contribution, proportionate to the salary in excess of Rs.6,500/- in the Provident Fund Account and that it ought to have been credited to the Pension Scheme. The aforesaid judgment, of a learned Single Judge was also confirmed in appeal. The amounts, being 8.33% contribution in excess of the earlier prescribed limit of Rs. 6,500/- in any event, have been retained with the Provident Fund Organization and what would be required to comply, with the judgments of this Court, is only book adjustments.

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 Fund Account to that extent also will stand transferred to the Pension Account.

6. The retired 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.

The writ petition is allowed. No costs.

Sd/-
**K. VINOD CHANDRAN,**
**JUDGE**

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// true copy //

P.A To Judge.