

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. 449 of 2015 (E)

PETITIONER(S) :

1. K.KRISHNANKUTTY
PANNAPARAMBU, VAYANATTUPURA,
KADUKKAMKUNNAM P.O.
PALAKKAD.
2. SWAMINATHAN A.,
MAMALA HOUSE, VIJAYA NAGAR, OLAVAKODE P.O.
THANAVE, PALAKKAD.
3. K.P. RADHAKRISHNAN
MECHERI HOUSE, SASTHAPURAM, KOTTAYI
PALAKKAD.
4. K.N.KRISHNANKUTTY
KUNDUMARAPURA, KANJIKODE,
PALAKKAD-678 621.
5. C.K.RAJAN
CHINKKANPURA HOUSE,
KADUKKAMKUNNAM P.O., PALAKKAD.
6. V. MANIKKAN
PALIYAMPADI HOUSE, THIRUVALATHUR,
PALAKKAD.
7. A. RAGHAVAN
PUVATHINGAL HOUSE,
KADUMMAMKUNNAM P.O., PALAKKAD.
8. P.KRISHNAN
VALIYAKKAD, PANDIPOTTA, ANAKKAL
MALAMPUZHA, PALAKKAD.
9. A.K.HUSSAN
KONNATH HOUSE, KANNODE, KANJIKODE
PALAKKAD.
10. K.MOHAMMEDKUTTY
NELLIKKAL HOUSE, SASTHA COLONY, MANTHAKKAD
MALAMPUZHA, PALAKKAD.

11. E.UNNIKRISHNAN
KULATHUR HOUSE, KUNIYANCHOLA, THADUKKASERY
KERALASERY, PALAKKAD.
12. C.KERALA KUMARI
KANJANAM, PANAYUR, ATHIKODE
PALAKKAD.
13. C.SWAMINATHAN
MANGOTTU HOUSE, SASTHA COLONY, MANTHAKKAD
MALAMPUZHA, PALAKKAD.
14. ABDUL RAHIMAN M.,
VII-842, OPP. FANTASY PARK, GANDHI NAGAR
MALAMPUZHA, PALAKKAD.
15. K.MANIKKAN
SOWMYA NIVAS, MANTHAKKAD, MALAMPUZHA
PALAKKAD.
16. V.K.T. MOHANDAS
KAYANAT HOUSE, SRK NAGAR, PALAPPURAM
PALAKKAD.
17. K.SUKUMARAN
PK.CHALLA, EDUPUKULAM, KANJIKODE
PALAKKAD-678 556.
18. MOHANDAS S.,
KANPILYKALAM, CHITTOOR.P.O., PALAKKAD.
19. V. KUTTAN
10/313, LAKSHAMVEEDU COLONY,
MALAMPUZHA, PALAKKAD.
20. K.MOHANAN
NANDANAM, CHEMMANKAD, KANNADI
PALAKKAD.
21. K.VASU
NJAVALINGAL HOUSE, THARUVAKURISHI, KANNADI
PALAKKAD.
22. GOVINDHANKUTTY C.,
VRINDA SASTHA NAGAR,
AKATHETHARA P.O., PALAKKAD.
23. A.SUNDARAN
DILIP VIHAR, KADUKKAMKUNNAM P.O., PALAKKAD.

24. A.VASU
THEYANKODE HOUSE, KANNANORE, COYALMANNAM
PALAKKAD.
25. N.RAGHAVAN
EACHANPURA, SASTHA COLONY, MALAMPUZHA.P.O.
PALAKKAD.
26. M.VENUGOPALAN
P-5 (A), PWD QUARTERS,
MALAMPUZHA P.O., PALAKKAD.
27. K.SHANMUGHAN
CHINGANPURA, KADUKKAMKUNNAM P.O.,
PALAKKAD.
28. P. NATARAJAN
DURGA NAGAR, CHERAD, MALAMPUZHA P.O.
PALAKKAD.
29. GANGADHARAN U.
PALAKKAMKALAM, PUDUNAGARAM P.O.,
PALAKKAD.
30. P.RADHAKRISHNAN
KIDAPPARAMBIL HOUSE, EAST NADA, PERUNGOTUKARA
THRIPRAYAR, THRISSUR.
31. V.K. JOHANNAN
VALUPPARAMBIL HOUSE, MANTHACADU, MALAMPUZHA
PALAKKAD.
32. AJITHA G.PILLAI
OTTAPANAKKAL HOUSE,
ANAPARAMBIL SOUTH P.O., THALAVADI
ALAPPUZHA.
33. C.KANDAMUTHU
LAKSHMI NIVAS, ALAMKODE, OLAVAKKOD P.O.
PALAKKAD.
34. T. MADHAVAN
GEETHAMADHAVAM, ERAMTHODE, VALAMPOOR
ANKADIPPURAM, PERINTHALMANNA, MALAPPURAM.
35. C.K.SREEKUMARAN
SREESATHYAM HOUSE, CHRIKALLINMALE, IKKALPARAMBU
PALAPPURAM P.O., OTTAPALAM, PALAKKAD.
36. C.S.MOHANAN
LALU LEENA VIHAR, KSHB COLONY, KALLEPPULLY
PALAKKAD.

37. P.J.JOSE
PULIKKOTTIL HOUSE, KULAPARATHI, MALAMPUZHA
PALAKKAD.
38. K.R.RAMACHANDRAN
KALARIKKAL HOUSE, PUTHUR, PALAKKAD.
39. G.SIMPSION
SUN VILLA, SAKTHI NAGAR, CHERAD
MALAMPUZHA, PALAKKAD.
40. P. KRISHNANKUTTY
PALLATH HOUSE, PERUMADIYOOOR, PATTAMBI
PALAKKAD.
41. ARUMUGHAN K.P.,
KANAKUPARAMBIL, MUNDOOR, PALAKKAD.
42. K.SANKARAN
KALARIKKAL HOUSE, PUTHUR, PALAKKAD.
43. M.MURUGHAN
THOTTAPURA HOUSE, AKATHETHARA P.O.,
PALAKKAD-678 008.

BY ADV. SRI.P.N.MOHANAN

RESPONDENT(S) :

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 FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
BHAVISHANIDHI BHAVAN, PATTOM PALACE
THIRUVANANTHAPURAM, PIN-695 004.
3. ASSISTANT PROVIDENT FUND COMMISSIONER
SUB REGIONAL OFFICE
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
BHAVISHANIDHI BHAVAN, ERANJIPALAM, KOZHIKODE-673 006.

4. KERALA CO-OPERATIVE MILK MARKETING FEDERATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR, MILMA BHAVAN
PATTAM PALACE.P.O., THIRUVANANTHAPURAM-4.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA
R2 BY ADVS. SMT.T.N.GIRIJA, SC
SMT.LATHA KRISHNAN, SC

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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...6/-

WP(C).No. 449 of 2015 (E)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1- A TRUE COPY OF THE CIRCULAR NO.PENSION/MISL/2005 ISSUED BY
THE SECOND RESPONDENT.**
- EXT. P2- A TRUE COPY OF THE LETTER NO.KR/TVM/PEN.CELL(4)
KMML.KR/10315/2007 DATED 20.2.2007.**
- EXT. P3- A TRUE COPY OF THE JUDGMENT DATED 4.11.2011 IN W.P[C]
NO.6643/2007.**
- EXT. P4- A TRUE COPY OF THE JUDGMENT DATED 5.3.2013 IN WRIT APPEAL
NO.1137/2012.**
- EXT. P5- A TRUE COPY OF THE JUDGMENT DATED 4.3.2014 IN W.P[C]
NO.2059/2014.**
- EXT. P6- A TRUE COPY OF THE JUDGMENT DATED 5.6.2014 IN W.P.[C]
NO.8298/2014.**
- EXT. P7- A TRUE COPY OF THE ORDER DATED 31.10.2013 OF THE ASST.
P.F. COMMISSIONER.**

RESPONDENT(S)' EXHIBITS : **NIL**

//TRUE COPY//

P.S. TO JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.449 of 2015 - E

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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.