IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No.694 of 2015 (J)

PETITIONER:

JOJU J.MANGALY,AGED 53 YEARS,
SON OF LATE JOSE K.MANGALY,
GENERAL MANAGER, MALABAR REGIONAL
CO-OPERATIVE MILK PRODUCER'S UNION LTD.,
HEAD OFFICE,PERINGOLAM,KUNNAMANGALAM P.O.,
KOZHIKODE-673571.

RESIDING AT HOUSE NO.33/548-D,)NEW NO.13/1865),
OPPOSITE ARCHANA FARM,A.R.CAMP ROAD,
MARIKUNNU P.O., KOZHIKODE-673012.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS:
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1. MALABAR REGIONAL CO-OPERATIVE MILK
PRODUCERS' UNION LIMITED,HEAD OFFICE,
PERINGOLAM,KUNNAMANGALAM P.O.,
KOZHIKODE-673571,REPRESENTED BY ITS
MANAGING DIRECTOR.

2. THE CENTRAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
HEAD OFFICE,BHAVISHYA NIDHI BHAVAN,
14,BHIKAIJI CAMA PLACE,NEW DELHI-110066.

3. THE REGIONAL PROVIDENT FUND COMMISSIONER,
BHAVISHYA NIDHI BHAVAN,ERANHIPPALAM P.O.,
KOZHIKODE-673006.

R1 BY ADV.SMT.LATHA KRISHNAN
R2 & R3 BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

pk

W.P.(C) NO.694/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE PHOTOSTAT COPY OF THE LETTER DATED 22.11.2014 SENT BY THE PETITIONER TO THE FIRST RESPONDENT.

EXT.P2:TRUE PHOTOSTAT COPY OF THE LETTER DATED 22.11.2014 ISSUED BY THE MANAGING DIRECTOR OF THE 1ST RSPONDENT TO THE THIRD RESPONDENT.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

pk

K. VINOD CHANDRAN, J.

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W.P.(C) No. 694 of 2015

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Dated this the 08th day of January, 2015

<u>J U D G M E N T</u>

I have heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the Provident Fund Organisation.

2. The petitioner is an employees of the 1st respondent. Admittedly, the petitioner is 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 petitioner contends 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, it is directed 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 extant employee shall also submit joint application, along with his 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.

7. It is also stated that the judgment passed in the same lines in other writ petitions were confirmed by a Division Bench in W.A No. 1442 of 2014. But, however, leaving the question open to be considered depending upon the result of the petitions filed before the Hon'ble Supreme Court. That reservation shall be there in the present writ petition also.

Writ petition allowed.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge