

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 1399 of 2015 (Y)

PETITIONER :

**CHERIAN ZACHARIAH,
KARUNALAYIL ASHISH VILLA, MARIAPALLY (P.O),
KOTTAYAM DISTRICT, PIN:686 013.**

**BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.R.B.RAJESH**

RESPONDENT(S):

- 1. THE EMPLOYEES PROVIDENT FUND ORGANIZATION,
REGIONAL OFFICE, KERALA, BHAVISHYANIDHI BHAVAN,
PATTOM, THIRUVANANTHAPUAM, PIN:695 004,
REPRESENTED BY THE REGIONAL PROVIDENT FUND COMMISSIONER.**
- 2. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYHEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, KOTTAYAM, PIN:686 001.**
- 3. THE MANAGING DIRECTOR,
M/S. MANGALAM PUBLICATIONS (INDIA) PRIVATE LIMITED,
S.H.MOUNT, KOTTAYAM, PIN:686 006.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 1399 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE ORDER DATED 2.1.2014 PASSED BY THE KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, THIRUVANANTHAPURAM IN APPEAL NO.389/2013.
- EXHIBIT P2: TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 3.1.2014.
- EXHIBIT P3: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 8.5.2014.
- EXHIBIT P4: TRUE COPY OF THE REVIEW PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 3.7.2014.
- EXHIBIT P5: TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 20.11.2014.
- EXHIBIT P6: TRUE COPY OF THE ORDER DATED 31.10.2014 PASSED BY THE COURT OF THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

K. VINOD CHANDRAN, J

W.P(C) No.1399 of 2015

Dated this the 20th day of January, 2015

J U D G M E N T

The petitioner is aggrieved with the rejection of the review application by Ext.P5. The petitioner filed an application under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "EPF & MP Act") for determining the amounts due to the petitioner alleging that the petitioner was employed under the respondent and that the respondent has not paid the contribution in accordance with the provisions of the EPF & MP Act. The specific contention taken up by the petitioner in the complaint produced at Ext.P2, and extracted in Ext.P3; is extracted hereunder:-

1. he has joined in M/s. Mangalam Publications (I) Pvt. Ltd., w.e.f 1989,

but enrolled to the Fund from 01.04.1989 only.

2. he has received arrears of wages @ Rs.4800/- on 20.02.1990 and 20.05.90 as part of wage board settlement.

3. he has received Rs.3 lakhs as wages from 09.08.1995 to 28.02.2008, but contribution not remitted on this wages by M/s. Mangalam Publications.

4. Contribution not remitted by M/s.Mangalam Publications on the wages received by him @ Rs.4472/- per month for the period 01.03.2008 to 13.12.2012.

2. The 2nd respondent, the Assistant Provident Fund Commissioner found that the

petitioner's claim at item No.1 alone is maintainable and passed Ext.P3 order. With respect to the 2nd item it was found that there is no evidence produced by the petitioner as to such payment having been made. Item Nos.3 and 4 was with reference to the payments made by the management on the basis of the interim order issued by this Court, in the writ petitions, filed by the management against the orders of the Labour Court, directing reinstatement. The lumpsum amount of Rs.3 lakhs was directed to be paid when the management by a writ petition resisted an application under Section 33C (2) of the Industrial Disputes Act, 1947 for payment of wages between the period of reinstatement order and the date of filing of the said application. In the writ petition filed against the award passed by the Labour Court in I.D No.27/1996, there was also a direction to pay Section 17 B wages. The rejection of the application with respect to failure

to make contributions with respect to the said payments were challenged in review .

3. The power of review is specifically confined to that conferred under Section 7B of the EPF & MP Act. As per Section 7B there should be discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the claimant or could not be produced at the time when the order was made or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

4. The power of review under Order 47 Rule 1 of the CPC has been succinctly stated in **State of West Bengal v. Kemal Sen Gupta [2008 (8) SCC 612]**. The power under Section 7B is akin to that of Order 47 Rule 1 and the expression “any other sufficient grounds” has to be interpreted in the light of the other specified grounds (Para 35). This Court does

not find any ground for a review of the order under Section 7A . However, this Court would not say anything about the sustainability of the contentions raised since definitely, an appeal is maintainable under Section 7I. Writ petition hence is dismissed upholding Ext.P6, but however, leaving open the remedies available to the petitioner to appeal against Ext.P3.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge