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. 1866 of 2015 (G)
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PETITIONER(S) :
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1. **E.G.PREM ANAND,**
   MARKETING OFFICER (H.G), TRCMPU LTD., KOLLAM DAIRY,
   THEVALLY P.O., KOLLAM.

2. **RAVEENDRANATH S.,**
   SENIOR SUPERVISOR P & I, TRCMPU LTD., KOLLAM DAIRY,
   THEVALLY P.O., KOLLAM.

3. **ANILA A.S.,**
   JUNIOR SUPERVISOR P & I, TRCMPU LTD., KOLLAM DAIRY
   THEVALLY P.O., KOLLAM.

4. **SREEDHARAN NAIR K.P.,**
   JUNIOR SUPERVISOR P & I, TRCMPU LTD., KOLLAM DAIRY
   THEVALLY P.O., KOLLAM.

5. **AJITH KUMAR S.G.,**
   DEPUTY ENGINEER, KOLLAM DAIRY, THEVALLY P.O.,
   KOLLAM.

6. **REMA S.,**
   MARKETING ORGANISER, TRCMPU LTD., KOLLAM DAIRY,
   THEVALLY P.O., KOLLAM.

7. **DINESH R.,**
   ASSISTANT MARKETING MANAGER, TRCMPU LTD., KOLLAM DAIRY,
   THEVALLY P.O., KOLLAM.

8. **RAJU T.,**
   SENIOR SUPERVISOR, TRCMPU LTD., KOLLAM DAIRY,
   THEVALLY P.O., KOLLAM.

9. **A.PADMAKUMAR,**
   DEPUTY ENGINEER, TRCMPU LTD., KOLLAM DAIRY,
   THEVALLY P.O., KOLLAM.

10. **USHA P.,**
    JUNIOR SUPERINTENDENT, TRCMPU LTD., KOLLAM DAIRY,
    THEVALLY P.O., KOLLAM.

11.T.KALALEKSHMI,
SENIOR ASSISTANT (HG), TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

12. ROY THOMAS,
JUNIOR SUPERINTENDENT, TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

13. K.BASHEER,
OFFICE ATTENDER, TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

14. AJITH KUMAR N.,
SENIOR ASSISTANT, TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

15. ALICE GEORGE,
JUNIOR SUPERINTENDENT, TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

16. SURESH KUMAR K.K.,
MANAGER (MARKETING), TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

17. D.KUNJUMON,
TECHNICIAN SP.GRAD.(EMT) (P&I SECTION), TRCMPU LTD.,
KOLLAM DAIRY, THEVALLY P.O., KOLLAM.

18. SASANKAN S.,
DRIVER (SPECIAL GRADE), TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

19. RADHAKRISHNA PILLAI T.,
TECHNICAL SUPERINTENDENT (E), TRCMPU LTD.,
KOLLAM DAIRY, THEVALLY P.O., KOLLAM.

20. VIMALKUMAR G.,
DEPUTY ENGINEER, TRCMPU LTD., KOLLAM DAIRY,
THEVALLY P.O., KOLLAM.

21. M.RADHAKRISHNAN,
ASSISTANT PERSONAL OFFICER, TRCMPU LTD.,
THIRUVANANTHAPURAM DAIRY, AMBALATHARA,
THIRUVANANTHAPURAM.

22. GOPALAKRISHNAN NAIR R.,
SENIOR SUPERVISOR P & I, TRCMPU LTD.,
THIRUVANANTHAPURAM DAIRY, AMBALATHARA,
THIRUVANANTHAPURAM.

23. SANAL KUMAR V.,
ASSISTANT PERSONAL OFFICER, TRCMPU LTD.,
THIRUVANANTHAPURAM DAIRY, AMBALATHARA,
THIRUVANANTHAPURAM.

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24. VENUGOPALAN NAIR,
TECHNICAL SUPERINTENDENT (E), TRCMPU LTD.,
THIRUVANANTHAPURAM DAIRY, AMBALATHARA,
THIRUVANANTHAPURAM.

25. RAJESH KUMAR C.S.,
VETERINARY OFFICER, TRCMPU LTD.
THIRUVANANTHAPURAM DAIRY, AMBALATHARA,
THIRUVANANTHAPURAM.

BY ADVS.SRI.P.N.MOHANAN
SMT.I.VINAYAKUMARI
SRI.C.P.SABARI

RESPONDENT(S) :
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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 FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO),
BHAVISHANIDHI BHAVAN, PATTOM PALACE,
THIRUVANANTHPAURAM, PIN - 695 004.

3. ASSISTANT PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
BHAVISHANIDHI BHAVAN, KOLLAM - 691 001.

4. THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE-
MILK PRODUCERS UNION,
REPRESENTED BY ITS MANAGING DIRECTOR, KSHEERA BHAVAN
PATTOM, THIRUVANANTHAPURAM - 4.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R3 BY ADV. SMT.T.N.GIRIJA, S.C
R4 BY SMT.LATHA KRISHNAN

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

Msd.

WP(C).No. 1866 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **A TRUE COPY OF THE JUDGMENT DATED 04.11.2011 IN W.P.(C)NO.6643/2007.**

EXHIBIT P2: **A TRUE COPY OF THE JUDGMENT DATED 05.03.2013 IN W.A.NO.1137/2012.**

EXHIBIT P3: **A TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.2059/2014.**

EXHIBIT P4.: **A TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.8298/2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P.(C) No. 1866 of 2015

Dated this the 20th day of January, 2015

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

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

2. The petitioners are the 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, 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 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.

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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