IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

WP(C).No. 5127 of 2011 (V)

PETITIONER(S):
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1. VARKEY, THANDUMPURATH HOUSE, KAKKOOR.

2. ELIAMMA, W/O.VARKEY,
   THANDUMPURATH HOUSE, KAKKOOR.

   BY ADVS.SRI.P.RAMAKRISHNAN
   SRI.T.C.KRISHNA

RESPONDENT(S):
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1. STATE OF KERALA, REPRESENTED BY ITS
   SECRETARY, LABOUR AND REHABILITATION
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. LABOUR COMMISSIONER,
   THIRUVANANTHAPURAM-695 001.

3. COMMISSIONER FOR WORKMEN'S
   COMPENSATION (DEPUTY LABOUR COMMISSIONER)
   ERNAKULAM-682 030.

   R2 BY ADV. GOVERNMENT PLEADER SRI. V.K. RAFEEQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5127 of 2011 (V)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1	:	TRUE COPY OF ORDER DATED 27.04.2007 IN WCC 42/2007
EXHIBIT P2	:	TRUE COPY OF AMENDMENT RULES PUBLISHED IN KERALA GAZETTE DATED 17.10.1994
EXHIBIT P3	:	TRUE COPY OF PETITION SUBMITTED BY THE COUNSEL FOR THE PETITIONERS DATED 14.01.2011
EXHIBIT P4	:	TRUE COPY OF CIRCULAR NO.7/2010 DATED 30.07.2010

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 5127 of 2011

Dated this the 6th day of January, 2015

J U D G M E N T

Petitioners, the dependents of a deceased employee, challenge the action of the respondents in retaining the amount deposited as per Ext.P1 Order in the Treasury; which, according to them, was against the specific provisions of Ext.P2 notification and visited them with hardship insofar as the amount deposited carry lesser interest than that in a Nationalized Bank.

2. As per the Interim Order of this Court the money, which is due to the petitioners, was directed to be deposited in fixed deposit. The learned counsel for the petitioners submits that though the petitioners' grievance is redressed, the circular, works injustice on the dependents of deceased employee, who raise a claim under the Employees Compensation Act, 1923.

3. The facts, with respect to the petitioners, is that the petitioners are the son and wife of a deceased employee, who approached the Commissioner for Workmen's Compensation with an application under section 22 of the Workmen's Compensation Act, 1923 (as it was named then). Certain amounts were awarded and on deposit, the same was retained in the Government Treasury account. The petitioners contented that by Ext. P2, the Government had amended Rule 10 of the Kerala Workmen's Compensation Rules 1958, facilitating deposit in the State Treasury Savings Bank Scheme or "in any of the Nationalized Bank in such a way that the maximum interest that is available could be secured"(sic). In the case of the petitioners, the amount was retained in the Treasury Savings Bank itself, deeming it to be a Civil Court Deposit, in accordance with Ext.P4 Circular. Ext.P4 is the Circular issued by the Labour Commissioner, in which the

objectionable clauses are clauses 1, 4 and 5, which are extracted hereunder:

> "1. No money shall be transferred to Nationalized Bank unless it has valid proceedings from the CWC or competent authority or Government order or a Court Decree.
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> 4. The money in the CCD account shall not be changed to any other account unless it has order from a judicial authority to do so.
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> 5. It is clarified, that the G.O.(Ms.) No.54/94/LBR dated 11.10.1994 is permitting the CWCs to deposit the money in to nationalized Bank if it get more interest rate than treasury interest rate and that also in the case of minors only."

4. The Labour Commissioner, on interpretation of Ext.P2 notification, found that the amendment was only with respect to minors and that the deposit to be made in Nationalized Banks was confined to those amounts which are entitled to the minors from among the dependents, who

approach the authority under the Employees Compensation Act.

5. On a reading of the amendment notification at Ext.P2 and its explanatory note this Court cannot countenance such understanding by the Labour Commissioner. The amendment brought in, as is indicated above, was following a judgment of this court in O.P. No.10348/1991, wherein a widow, who had approached the Commissioner under section 22 of the Act had filed a Writ Petition seeking a direction that the amounts deposited as per the award may be so deposited in a Nationalized Bank so as to facilitate accrual of higher rate of interest. The said proceeding and the present proceeding was necessitated only because the award amounts are disbursed only after ascertaining the genuineness of the heirship claimed by the defendants, after obtaining necessary certificate from the competent officer. The said exercise takes time and in the

meanwhile if the money is kept in the Treasury Savings Bank, the dependents would be prejudiced insofar as the deposit attracts lesser interest, in a treasury savings bank account.

6. The judgment dated 8.10.1991 in O.P. No.10348/1991 definitely directed the amount belonging to the minor to be withdrawn from the Treasury Saving Bank Account and remitted in a Nationalized Bank so as to facilitate accrual of maximum interest. It is to be noticed that there was no general direction issued in the said judgment. However, the Government, adopting the principles of the judgment; which would facilitate accrual of more interest to the dependents, thought it fit to bring in amendment to the Rules as per Ext.P2 notification. Despite the judgment being noted in the explanatory note, it is to be specifically observed that the amendment as such did not confine itself to the amounts due to minors. The

amendment, as it reads, facilitates deposit made, of amounts awarded under the Employees Compensation Act; either in the Treasury Savings Bank or in a Nationalized Bank with the ultimate intention of facilitating maximum interest accrual on such deposits.

7. Ext.P4 circular and the aforesaid clauses would be beyond the authority of the Labour Commission. The Government has made appropriate amendments to the Rules which cannot be tinkered with by the Labour Commissioner. The ultimate intention, as is noticed, is accrual of maximum interest and any deposit made would have to be deposited in the Treasury or Nationalised Bank wherein maximum interest is accrued; that is the discretion of the authority under the Employees Compensation Act. The above circular, insofar as the aforementioned clauses are concerned, has to be read down deleting the aforesaid clauses. The Government shall issue appropriate

communication within a period of one month from today to the Industrial Tribunals, who are now constituted as the authority under the Employees Compensation Act, facilitating deposit of amounts with Nationalised Banks also, for facilitating maximum accrual of interest.

Writ Petition is allowed.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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