

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 3530 of 2015 (M)

PETITIONER(S) :

1. **ABDUL GAFOOR N.V.,
DRIVER GR-I.,
MALABAR REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD.,
HO, PERINGOLAM, KUNNAMANGALAM, KOZHIKODE – 673571.**
2. **BEERAN P.S., SPL .GR. ATTENDER HG3, MRCMPU HO,
PERINGOLAM, KUNNAMANGALAM – 673571.**
3. **BALAKRISHNAN M.,
SR. GR. DRIVER (HG), MRCMPU LTD
HO, PERINGOLAM, KUNNAMANGALAM,
KOZHIKODE - 673571**
4. **SYAMALA M.,
JUNIOR SUPERINTENDENT, MRCMPU LTD.,
HO, PERINGOLAM, KUNNAMANGALAM ,
KOZHIKODE – 673571.**
5. **VIJAYAKUMAR C.,
SENIOR GRADE DRIVER,
MRCMPU, KOZHIKODE DAIRY
PERINGOLAM, KUNNAMANGALAM**
6. **MANI K.,
PLANT ATTENDER, MRCMPU
KOZHIKODE DAIRY, PERINGOLAM,
KUNNAMANGALAM**
7. **CHANDRAN KALLIL, DRIVER,
MRCMPU, KOZHIKODE DAIRY
KUNNAMANGALAM**
8. **SUDHEESH KUMAR K., TECHNICIAN GR.II, HG
MRCMPU, KOZHIKODE DAIRY, KUNNAMANGALAM**
9. **ANILKUMAR N., TECHNICIAN GR.II, HG,,
MRCMPU, KOZHIKODE DAIRY
PERINGOLAM.**

10. BALAKRISHNAN U.,
TECHNICIAN GR.I, MRCMPU
KOZHIKODE DAIRY, KUNNAMANGALAM.

11. NARAYANANUNNI P.,
TECHNICIAN GR.I, MRCMPU
KOZHIKODE DAIRY, KUNNAMANGALAM

BY ADVS.SRI.K.SASIKUMAR
SRI.S.ARAVIND
SRI.R.ROHITH
SRI.K.JANARDHANA SHENOY
SRI.V.N.RAJAPPAN
SRI.V.K.PRASAD
SRI.MATHEW JOHN PUTHUPARAMPIL

RESPONDENT(S) :

1. UNION OF INDIA (UOI)
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT
DEPARTMENT OF EMPLOYMENT, NEW DELHI-110 001.
2. CENTRAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION, HEAD OFFICE
BHAVISHYA NIDHI BHAVAN, NEW DELHI 110 066.
3. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION (EPFO)
MINISTRY OF LABOUR, GOVERNMENT OF INDIA
PATTOM, THIRUVANANTHAPURAM.
4. REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANIZATION (EPFO)
SUB REGIONAL OFFICE, ERANHIPALAM, KOZHIKODE - 673006
5. MALABAR REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD,
HEAD OFFICE - PERINGALAM, KUNNAMANGALAM PO.,
KOZHIKODE - 673571
REPRESENTED BY ITS MANAGING DIRECTOR

R1 BY ADV. SRI.N.NAGARESH, ASGI
R2 TO R4 BY ADV. SMT.T.N.GIRIJA, SC
R5 BY ADV. SMT.LATHA KRISHNAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 3530 of 2015 (M)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1:** A TRUE COPY OF THE ABOVE SAID CIRCULAR NO. PENSION/MISC/2005.
- EXGHIBIT P2:** A TRUE COPY OF THE LETTER DATED 16.12.2014 FORWARDED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT IN RESPECT OF PETITIONERS 1 TO 4.
- EXHIBIT P3:** A TRUE COPY OF THE ANOTHER LETTER DATED 6.1.2015 FORWARDED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT IN RESPECT OF PETITIONERS 5 TO 11.
- EXHIBIT P4:** A COMPARATIVE TABLE SHOWING DETAILS OF EACH OF THE PETITIONERS, THEIR EPF NOS., DATE OF JOINING SERVICE, DATES WHEN THEIR PAY EXCEEDED THE CELILING LIMIT ETC.
- EXHIBIT P5:** A TRUE COPY OF THE JUDGMENT DATED 19.11.2014 IN WPC NO. 28306/2014

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J.

=====

W.P.(C) No.3530 of 2015 - M

=====

Dated this the 10th day of February, 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, 3 and 4, the learned Assistant Solicitor General appearing for the 1st respondent and the learned Standing Counsel appearing for the 5th respondent.

2. The petitioners in the Writ Petition are the employees of the 5th 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 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.

The writ petition is disposed of. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge