IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 3763 of 2015 (U)

PETITIONER(S):

N. VENUGOPALAN,
PRARTHANA, 12/362, THEKKEKARA,
P.O. KOTTAI, PALAKKAD-678 572.

BY ADV. SRI.P.N.MOHANAN.

RESPONDENT(S) :

1. UNION OF INDIA (UOI),
REP 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,
THIRUVANANTHAPURAM, PIN - 695 004.

3. ASSISTANT PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE,
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO),
BHAVISHANIDHI BHAVAN,
ERANJIPALAM, KOZHIKODE - 673 006.

4. KERALA CO-OPERATIVE MIKL MARKETING FEDERAION LTD.,
REP. BY ITS MANAGING DIRECTOR, MILMA BHAVAN
PATTAM PALACE P.O., THIRUVANANTHAPURAM-4.

BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY SMT.LATHA KRISHNAN
BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT. P1:- A TRUE COPY OF THE CIRCULAR NO PENSION/MISL/2005 ISSUED BY THE 2ND RESPONDENT.

EXT. P2:- A TRUE COPY OF THE LETTER NO KR/TVM/PEN CELL (4)KMML KR/10315/2007 DTD 20/2/2007.

EXT. P3:- A TRUE COPY OF THE JUDGMENT DTD 4/11/2011 IN WPC NO 6643/2007.

EXT. P4:- A TRUE COPY OF THE JUDGMENT DTD 5/3/2013 IN WA 1137/2012.

EXT. P5:- A TRUE COPY OF THE JUDGMENT DTD 4/3/2014 IN WPC NO 2059/2014.

EXT. P6:- A TRUE COPY OF THE JUDGMENT DTD 5/6/2014 IN WPC NO 8298/2014.

EXT. P7;- A TRUE COPY OF THE ORDER DTD 31/10/2013 OF THE ASST/P F COMMISSIONER

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS. -

K.VINOD CHANDRAN, J

W.P.(C).No. 3763 of 2015

Dated 6th February, 2015

JUDGMENT

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

2. The petitioner in the Writ Petition is the retired employees of the 4th respondent. Admittedly, the petitioner was covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1995. The petitioner had salary above Rs.6500/-, and is 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 deduction 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. With respect to retired employee, who had drawn the retirement benefits by way of Provident Fund proportionate amounts along with interest accrued in the account as also that accrued after the withdrawal of the Provident Fund amounts, have to be refunded to the Provident Fund Organization. The retired employee shall submit the application, along with the employer if 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

Mrcs

//True Copy//