

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 4335 of 2015 (N)

PETITIONER(S):

1. **C.P.RADHAKRISHNAN, AGED 80 YEARS,
S/O LATE U. RAMACHANDRAN NAIR, KRISHNA PREETHI, L4-28,
HOUSING COLONY, KOZHICODE-673 001.**
2. **P.V. BALAGOPAL, AGED 60 YEARS,
S/O LATE VASUDEVA MENON, 23/1637 A, VAISNAVAM,
KALLAI P.O., CALICUT-673 003.**
3. **C.SAMIKUTTY, AGED 62 YEARS,
S/O. PIRUNGAN, CHERUKKADAN PARANBATH, VALYANNUR P.O.,
CHERUPPA CALICUT, 673 661.**

**BY ADVS.SRI.V.V.NANDAGOPAL NAMBIAR
SMT.PREEJA P. VIJAYAN**

RESPONDENT(S):

1. **UNION OF INDIA (UOI),
REPRESENTED BY THE SECRETARY TO GOVERNMENT
OF INDIA MINISTRY OF LABOUR AND 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- 695 001.**
4. **REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION (EPFO),
SUB REGIONAL OFFICE, ERANHIPALAM, KOZHIKODE-673 006.**
5. **REGIONAL PROVIDENT FUND COMMISSIONER,
BHAVISHYANIDHI BHAVAN, KALOOR, KOCHI-673 006.**

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**6. KERALA CO-OPERATIVE MILK MARKETING FEDERATION LTD.,
HEAD OFFICE, MILMA BHAVAN, PATTOM,
THIRUVANANTHAPURAM-4,
REPRESENTED BY ITS MANAGING DIRECTOR.**

**R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 TO R5 BY SMT.LATHA KRISHNAN, SENIOR ADVOCATE
ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF CIRCULAR NO. PENSION/MISC./2005.

**EXHIBIT P2: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT
DATED 19.11.2014 IN WPC NO.28306/2014.**

EXHIBIT P3: TRUE COPY OF THE JDGMENT DATED 5.3.2013 IN W.A. NO. 1137/2012

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

K.VINOD CHANDRAN, J

W.P.(C).No. 4335 of 2015

Dated 11th February, 2015

JUDGMENT

I have heard the learned counsel appearing for the petitioners, the learned Assistant Solicitor General appearing for the 1st respondent, Smt.T.N.Girija appearing for respondents 2, 3, 4 and 5 and Sri.Latha Krishnam appearing for the 6th respondent.

2. The petitioners in the Writ Petition are the retired employees of the 6th respondent. Admittedly, the petitioners were 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 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 employees, who have drawn their 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 employees shall 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.

The writ petition is allowed, leaving the parties to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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