IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 5446 of 2015 (E)

PETITIONER(S):

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1. V.JOHN VARGHESE,
   VALLAYIL VEEDU, ALAMCHERY, EROOR P.O.,
   KOLLAM - 691 312.

2. C. REMESHAN,
   DEVIKRIPA, NEAR CHAMUNDI TEMPLE, PALLIPURAM P.O.,
   THIRUVANANTHAPURAM - 695316.

3. L. THOMASKUTTY,
   NIRAPPUVILA VEEDU, PODIYATTUVILA P.O., VALAKOM,
   KOLLAM - 691 532.

4. A. ABDUL KARIM,
   S.S.VILLA, NETHAJI NAGAR, H. NO. 58,
   KAVANAD P.O., KOLLAM - 691 003.

5. S. UDAYAKUMARI DEVI,
   PALATHINKEEZHIL, CHIRAKKADAVAM, KAYAMKULAM P.O.,
   ALAPPUZHA.

6. S.N. RAJENDRAN UNNITHAN,
   SREESAILAM, MALACKAL P.O., MADAVOOR,
   PALLICKAL,
   THIRUVANANTHAPURAM - 695 602.

7. V. PARAMESWARAN PILLAI,
   KARALI MANAYIL, PANMANA P.O., CHAVARA,
   KOLLAM.

8. G. CHANDRAN,
   KOTTAYI THARAYIL, ERUVA EAST P.O., KAYAMKULAM,
   ALAPPUZHA.

9. M. HARIDASAN,
   ARUN NIVAS, KANNIMOOLA THEKKEMATHILIL P.O.,
   KOLLAM - 691 601.

10. G. SATHYASEELAN,
    SATHYA NILAYAM, KOTTUKAL P.O., ANCHAL VIA,
    KOLLAM.

11. K. MOHANACHANDRAN,
    SIMI BHAVAN, OYOOR, KARINGANNOOR P.O.,
    KOTTARAKKARA, KOLLAM.

12. E. JAMALUDHEEN KUNJU,
    ELINJICKAL THEKKETHIL,
    CHAVARA BRIDGE P.O., KOLLAM.

13. G. RAJENDRAN,
    REMIYA BHAVAN, PUTHUKKADU, CHAVARA P.O.,
    KOLLAM.

14. LEKHA V.,
    MANNUR KANJIYIL, MOTTACKAL, THEVALAKKARA,
    KOLLAM.

15. M. MADAN PILLAI,
    PRIYADARSINI, SUBSTATION LANE, PAPPADU,
    NETTAYAM P.O., THIRUVANANTHAPURAM-695 013.

BY ADV. SRI.P.N.MOHANAN.

RESPONDENT(S):
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1. UNION OF INDIA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA,
   MINISTRY OF LABOUR AND DEPARTMENT OF EMPLOYMENT,
   NEW DELHI - 110 001.

2. REGIONAL PROVIDENT FUND COMMISSIONER,
   EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO),
   BHAVISHANIDHI BHAVAN, PATTOM PALACE,
   THIRUVANANTHAPURAM - 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,
   REPRSENTED BY ITS MANAGING DIRECTOR, KSHEERA BHAVAN,
   PATTOM, THIRUVANANTHAPURAM - 695 004.

R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY ADV.SMT.LATHA KRISHNAN
BY SMT.T.N.GIRIJA, SC, EPF ORGANISATION.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

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

EXHIBIT-P2- TRUE COPY OF THE LETTER NO. KR/TVM/PEN.CELL (4) KMML KR/10315/ DATED 20/02/2007.

EXHIBIT-P3- TRUE COPY OF THE JUDGMENT DATED 04/11/2011 IN W.P(C) 6643/2007.

EXHIBIT-P4- TRUE COPY OF THE JUDGMENT DATED 05/03/2013 IN W.A 1137/2012.

EXHIBIT-P5- TRUE COPY OF THE JUDGMENT DATED 04/03/2014 IN W.P(C) 2059/2014.

EXHIBIT-P6- TRUE COPY OF THE JUDGMENT DATED 05/06/2014 IN WP(C) NO.8298/2014.

EXHIBIT-P7- TRUE COPY OF THE ORDER DATED 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. 5446 of 2015

Dated 20th February, 2015

JUDGMENT

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

2. The petitioners in the Writ Petition are the retired employees of the 4th 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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