

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 5740 of 2015 (N)

PETITIONER(S):

1. K.S. MOHANAN,
ANASTHANATH KOTTINATTU, MEMANA,
OACHIRA P.O., KOLLAM- 690 526.
2. T.A. NASSAR,
ATTIYIL, VATTAYAL WARD, THIRUVAMPADY P.O.,
ALAPPUZHA -688 002.
3. K. CHIDAMBARAN,
BHAGAVATHI PARABU, S.N. PURAM,
CHERTHALA, ALAPPUZHA -688 582.
4. V.K. MANOHARAN, VELLAPPALLI HOUSE,
PUNNAPRA P.O.,ALAPPUZHA- 688 004.
5. V.PUSHPANANDAN,
KARICHAPARAMBU HOUSE,
MANNAMCHERRY P.O.,ALAPPUZHA -688 538.
6. T.K. VASAVAN, GOKULAM,
C.M.C- 20 CHERTHALA P.O., ALAPPUZHA- 688 524.

BY ADV. SRI.P.N.MOHANAN.

RESPONDENT(S):

1. UNION OF INDIA (UOI),
REPRESENTED 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, PATTAM PALACE,
THIRUVANANTHAPURAM, PIN- 695 004.
3. ASSISTANT PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE, EMPLOYEES PROVIDENT
FUND ORGANISATION (EPFO), BHAVISHANIDHI BHAVAN,
KALOOR, ERNAKULAM.

WP(C).No. 5740 of 2015 (N)

**4. KERALA CO-OPERATIVE MILK MARKETING FEDERATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, MILMA BHAVAN,
PATTAM PALACE P.O., THIRUVANANTHAPURAM- 4.**

**R1 BY ADV. SRI.N.NAGARESH, ASSIST. S.G. OF INDIA.
R2 & R3 BY ADV. SMT.TN.GIRIJA, SC,
BY ADV. SMT.LATHA KRISHNAN, SC.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 5740 of 2015 (N)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: A TRUE COPY OF THE CIRCULAR NO. PENSION /MISL/2005 ISSUED BY THE SECOND RESPONDENT.
- P2: A TRUE COPY OF THE LETTER NO. KR/TVM/PEN.CELL (4) KMML.KR/10315/2007 DATED 20.02.2007.
- P3: A TRUE COPY OF THE JUDGMENT DATED 04.11.2011 IN WP(C).NO. 6643/2007.
- P4: A TRUE COPY OF THE JUDGMENT DATED 05.03.2013 IN W.A. NO.1137/2012.
- P5: A TRUE COPY OF THE JUDGMENT DATED 04.03.2014 IN WP(C).NO.2059/2014.
- P6: A TRUE COPY OF THE JUDGMENT DATED 05.06.2014 IN WP(C).NO. 8298/2014.
- P7: A TRUE COPY OF THE ORDER DATED 31.10.2013 OF THE ASST. PF COMMISSIONER.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

K. VINOD CHANDRAN, J

W.P(C) No. 5740 of 2015 N

Dated this the 24th day of February, 2015

J U D G M E N T

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

66343 & 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 extant employees and those retired 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.

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. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge