

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 6959 of 2015 (T)

PETITIONERS:

1. EDWIN JOSE P S, AGED 24 YEARS
PLANT ATTENDER GRADE II, PF A/C.NO.KR/26282/11
PF UAN.100144813657 T.R.C.M.P.U.LTD
PATHANAMTHITTA DAIRY, MAMOOD JUNCTION, NARIYAPURAM
PATHANAMTHITTA.
2. RAJANI.S.NAIR,
JUNIOR ASSISTANT, PF A/C.NO.KR/24727/61
PF UAN.100293344828-T.R.C.M.P.U.LTD, P & I OFFICE
MANNAR.P.O, PIN:689622.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

1. UNION OF INDIA (UOI),
REPRESENTED BY THE SECRETARY TO GOVT.OF INDIA
MINISTRY OF LABOUR & DEPARTMENT OF EMPLOYMENT
NEW DELHI-110001.
2. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
BHAVISHYANIDHI BHAVAN, PATTOM PALACE
THIRUVANANTHAPURAM, PIN-695004.
3. ASSISTANT PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO)
BHAVISHYANIDHI BHAVAN, KALOOR, COCHIN.
4. THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE-MILK PRODUCERS
UNION, REPRESENTED BY ITS MANAGING DIRECTOR,
KSHEERA BHAVAN, PATTOM, THIRUVANANTHAPURAM- 4.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R3 BY SMT.T.N.GIRIJA, SC, EPF ORGANISATION
R BY SMT.LATHA KRISHNAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6959 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE COPY OF THE JUDGMENT DATED 4.11.2011 IN W.P(C)6643/2007**
- EXT.P2: TRUE COPY OF THE JUDGMENT DATEED 5.3.2013 IN W.A.1137/2012**
- EXT.P3: TRUE COPY OF THE JUDGMENT REPORTED IN W.P(C)2059/2014**
- EXT.P4: TRUE COPY OF THE JUDGMENT REPORTED IN W.P(C)8298/2014**
- EXT.P5: TRUE COPY OF THE CIRCULAR NO.PENSION/MISC/2005**
- EXT.P6: TRUE COPY OF THE PROCEEDINGS DATED 20.2.2007 ISSUED BY THE
 SECOND RESPONDENT**
- EXT.P7: TRUE COPY OF THE ORDER DATED 31.10.2013 OF THE ASSISTANT
 PROVIDENT FUND COMMISSION.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

STK

K. VINOD CHANDRAN, J.

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W.P.(C) No.6959 of 2015 - T

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

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