

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).NO. 12372 OF 2012 (V)

PETITIONERS:

BIJY GEORGE, AGED 40 YEARS,
H.S.S.T (MATHS)
ST. IGNATIUS HIGHER SECONDARY SCHOOL, KANJIRAMATTOM,
ERNAKULAM -682 315.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.
2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION,
HOUSING BOARD BUILDINGS, SANTHI NAGAR
THIRUVANANTHAPURAM- 695 001.
3. THE ASSISTANT PROVIDENT FUND OFFICER,
OFFICE OF THE DPPUTY DIRECTOR OF EDUCATION
ERNAKULAM - 682 030.
4. THE DEPUTY DIRECTOR OF EDUCATION,
ERNAKULAM - 682 030.
5. THE MANAGER,
ST.IGNATIUS VOCATIONAL AND HIGHER SECONDARY SCHOOL,
KANJIRAMATTOM, ERNAKULAM - 682 315.

R5 BY ADV. SRI.K.I.JOY

R5 BY ADV. SRI.A.N.SANTHOSH

R1-R4 BY ADV. GOVERNMENT PLEADER, SRI. V.K. RAFAEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT-P1-COPY OF THE ORDER DATED 23/01/2003 ISSUED BY THE
5TH RESPONDENT.

EXHIBIT-P2-COPY OF THE ORDER DATED 20/01/2004 ISSUED BY THE
2ND RESPONDENT.

EXHIBIT-P3-COPY OF THE REPRESENTATION ALONG WITH STATEMENT
OF ACCOUNTS SUBMITTED BY THE PETITIONER BEFORE THE
3RD RESPONDENT.

EXHIBIT-P4-COPY OF THE LETTER DATED 17/02/2011 SENT BY THE
PRINCIPAL OF ST.IGNATIUS VOCATIONAL ND HIGHER SECONDARY
HIGH SCHOOL, KANJIRAMATTOM TO THE 3RD RESPONDENT.

EXHIBIT-P5-COPY OF THE REPRESENTATION DATED 07/03/2012
SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXHIBIT-P6-COPY OF THE REPLY DATED 22/03/2012 ISSUED BY THE
3RD RESPONDENT TO THE PETITIONER.

EXHIBIT-P7-COPY OF G.O.(RT) NO. 5354/2010/G.EDN. DATED 29.11.2010
ISSUED BY TE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:NIL

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.12372 of 2012

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Dated this the 4th day of November, 2015

J U D G M E N T

The petitioner was first appointed as an Upper Primary School Assistant (UPSA) in St. Ignatious Vocational Higher Secondary School, Kanjiramattom on 19.07.1995. Thereafter, she was appointed as HSST Junior (Mathematics) in Higher Secondary Section of the same school, as per Ext.P1 Order. While the petitioner was continuing as UPSA, Provident Fund Account Number, KASEPF Account No.E-18026 was opened in the name of the petitioner in the year 1995 itself. Since then, the petitioner has been contributing towards the Provident Fund Account at the rate provided under the provisions contained in the Employees Provident Fund Account and Miscellaneous Provisions Act, 1952, and the same was promptly remitted till July, 2007 though, she

-: 2 :-

was appointed as HSST (Junior) in the year 2003. She was compelled to remit to the same Employees' Provident Fund contribution in the old account, on the reason that she was not allotted with a new account applicable to Higher Secondary School teachers. Thereafter, she was allotted with a new Account No.T/07049038 KAHSS (Plus Two EPF). After the Provident Fund in the Higher Secondary Section was opened in the name of the petitioner, all the contributions made towards Provident Fund, while working as UPSA, since 1995 and thereafter, while working as HSST till 2007, has to be transferred along with statutory interest towards account No.T/07049038 and for the above purpose, the petitioner submitted a representation dated 16.06.2011 to the 3rd respondent, requesting to transfer the entire contribution made towards the Provident Fund Account No.E-18026 along with interest towards account No. account

-: 3 :-

No.T/07049038. On receipt of Exts.P3 and P4, forwarding letter of the Principal, in December, 2011, the 3rd respondent transferred PF contribution made towards account No.E-18026 along with interest accrued thereon up to June, 2008 only, to the account No. T/07049038. According to the petitioner, the above action of the 3rd respondent's is absolutely arbitrary, unfair and unreasonable, discriminatory and violative of Articles 14 and 21 of the Constitution of India. This Order is under challenge in this Writ Petition.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. Learned counsel for the petitioner submits that the 3rd respondent ought to have transferred the PF contribution made towards account No.E-18026 from 1995 to 2007, and interest payable on the said amount from 1995, till the date of transfer towards Account No.T/07049038 KAHSS in December, 2011. But, the 3rd

-: 4 :-

respondent had transferred the actual contribution made towards account No. E-18026 along with accrued interest thereon till June, 2008, which comes to Rs.2,52,761/-in December, 2011 only. In short, the 3rd respondent has transferred interest up to June, 2008 only, when she was liable to get interest up to December, 2011. In support of the arguments, learned counsel for the petitioner produced Government Order No. 248/2010/PED dated 30.11.2010, which states that when Provident Fund contribution in KASEPF account number is transferred to KAHSEPF account, the subscriber is entitled to get interest for the whole amount pending in the KASEPF account with interest up to the date of transfer of the list to the Director, Higher Secondary.

4. Per contra, learned Government Pleader advanced arguments to justify retention of interest accrued during the period from 2008 to 2011 in the

-: 5 :-

KASEPF account itself. To fortify the said contention, the learned Government Pleader has produced a letter dated 16.08.2011, sent by the Principal Secretary to the Director Public Instruction dated 16.08.2011 and submit that the mode of transfer of fund, specified in G.O.(P) No. 248/2010/PED dated 30.11.2010 is made subject to the provisions under the General Provident Fund (Kerala) Rules.

5. The point that arises for consideration is, whether the petitioner is entitled to get transferred the interest accrued to the total amount contributed by her during the period from 2008 to December 2011, from KASEPF account to KAHSSEPF account.

6. Going by G.O.(P) No. 248/2010/PED dated 30.11.2010, it is specifically stipulated that when the amount pending in KAHSSEPF is transferred to KAHSSEPF, interest accrued to the that amount, till the month of sending the list to DPI must be calculated and

-: 6 :-

granted to the teacher and next month onwards interest can be taken from KAHSSEPF account. In that be so, in my view, in the instant case there is no reason for doubt, as regards the right to get interest transferred to KAHSSEPF account, till December, 2011. The 3rd respondent ought to have transferred the interest accrued on PF contribution from July, 2008 to December, 2011 to Provident Fund Account No. T/07049038. The learned Government Pleader tried to justify the retention of said interest under the letter datd 16.08.2011, sent by the Principal Secretary to the DPI. In my view, that letter is of no consequence at all, as the said communication is seen made in derogation of the Government Order dated 30.11.2010. When the aforesaid Government Order prescribed a specific mode of transfer of interest, any communication issued in repugnancy to that mode of transfer in the Government Order is not binding to beneficiaries of that Government Order and has no legal

-: 7 :-

effect at all, unless and until the said order is cancelled or amended or superseded by a fresh Government Order.

7. In this analysis, I find that the relief sought for in the Writ Petition is allowable as such. Consequently, the 3rd respondent is directed to transfer the interest accrued on the petitioner's PF account made towards Account No.E-18026 from July, 2008 to December 2011, to Provident Fund Account No. T/07049038 within a period of three months from the date of production of this judgment.

This Writ Petition is disposed of accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge