

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 10682 of 2015 (I)

PETITIONERS :

1. T.P.DINESH KUMAR, AGED 59 YEARS,
JR. OFFICER (A/S'S), 7800, PPO NO.KR/KKD/00053324
D4, SUDARSANAM, HILL VIEW NAGAR,
PUDUPPARIYARAM, PALAKKAD 678 731.
2. RAGESH A.V.,
JR.OFFICER, REF.NO.7731, PPO NO.KR/KKD/00051926,
NIKUNJ, SAIBABA COLONY, KALLEKULANGARA P.O.,
PALAKKAD 678 009.
3. M.GOPINATHAN NAIR,
OFFICER, REF.NO. 3626, PPO NO.KR/KKD/00053011
AISHWARYA-PANDARATHIL, KADAVALLAVU,
THATHAMANGALAM, PALAKKAD 678 102.
4. P.THANGARAJU
ENGINEER (S), REF.NO.7712, KR/KKD/00050152,
TPPN NIVAS, PRECOT NEW COLONY, KANJIKODE WEST 678 623.
5. A.S.NARAYANANKUTTY
JR.ENGINEER, KR/KKD/00051925, HARE KRISHNA,
ANJALY GARDENS, PALLIPURAM P.O, PALAKKAD 678 006.
6. O.M.ALIAS
MANAGER, REF.NO.2552, KR/KKD/00053013
OLANGATTIL HOUSE, VILANGU P.O.,
ERNAKULAM DISTRICT. 683 561.
7. P.K.RAMAKRISHNAN
OFFICER (S), C4, INSTRUMENTATION TOWNSHIP,
KANJIKODE WEST, PALAKKAD 678 623.
8. V.SASIDHARAN
AGM, REF.NO.3460, KR/KKD/00053010
VAISHNAVI, 24/702 (13), MYTHRI NAGAR HSG COLONY NO.76
NOORANI, PALAKKAD 678 004.
9. P.S.SURESHKUMAR,
SR.OFFICER, REF.NO.3632, KR/TVM/00074156,
NAMPALLIL PUTHEN PURAYIL, KAVUMBHAGOM P.O,
THIRUVALLA, PATHANAMTHITTA, KERALA 689 102.

10. S.SRIDHARAN
JSO, REF.NO.3950, TB/TAM/00322865
OLD NO.22/NEW 26
STATE BANK COLONY EXTN. NANGANALLUR, CHENNAI 600061.
11. M.VELAYUDHAN NAIR
JSO, REF.NO.7802, KR/KKD/OOO52855
SREELAKSHMI, PUTHUR PADAM, KURUDIKKADU
PUDUSSERY, PALAKKAD 678 623.
12. SWPAN KUMAR MITRA
JSO, REF.NO.4139, KR/KKD/00055164
C/O.K.L.MITRA, BTR NO.A 79, II TOWNSHIP
KANJIKODE WEST, PALAKKAD 678 623.
13. K.A.RAMACHANDRAN
JSO, REF.NO.7747, KR/KKD/00054127
NO.65, KRISHNA PRIYA, PVR NAGAR
PALLIPURAM P.O, PALAKKAD 678 006.
14. MATEHW K.JOHN
ENGINEER (S), REF.NO.3679, KR/KCH/00083670
C6, II TOWNSHIP
KANJIKODE WEST PALAKKAD KERALA 678 623.
15. VISWANATHAN K.P
JSO, REF.NO.3614, KR/KKD/00053012
DEVIKRIPA, 2/321 (16), SRIRAM COLONY
MANALMANTHA, AMBIKAPURAM P.O, PALAKKAD 678 011.
16. R.HARIDASAN
JSO, REF.NO.7755, KR/KKD/O0051567
USHUS, 20/470, THEKKETHARA
VENOLI ROAD, PUDUSSERY P.O, PALAKKAD 678 623.
17. P.MOHANDAS
FOREMAN, REF.NO.7906, KR/KKD/00054440
SARADALAYAM, KUNNATHURMEDU P.O, PALAKKAD 678 013.
18. M.MURALEEDHARAN
JR. ENGINEER, REF.NO.7902, GOPALA MANDIRAM
NEAR VILLAGE OFFICE, PIRAYIRI, PALAKKAD 678 004
KR/KKD/00051738.
19. D.LATHAKUMARI
JR.OFFICER, REF.NO.7742, KR/KKD/0054984
GANGOTRI, KUNNANUR, CHANDRANAGAR P.O
PALAKKAD 678 007.
20. S.THILAGAR,
MANAGER, REF.NO.7860, KR/KKD/00054985
S.MADHAV NAGAR, VADAVALLI, COIMBATORE 46.

21. P.CHANDRABABU
OCMA BRAND, REF.NO.7745, KR/KKD/00050295
BHAVANA, SURABHI NAGAR, KURUDIKKAD
PUDUSSERY P.O, PALAKKAD 678 623.
22. K.DAMODARAN UNNI
JR.ENGINEER, REF.NO.7786, KR/KKD/00050297
QTR.B.18, II TOWNSHIP, INSTRUMENTATION LTD
KANJIKODE WEST, PALAKKAD 678 623.
23. A.KESAVADAS
JR.OFFICER, REWF.NO.7799, KR/KKD/00051737
RAGASUDHA, THANNISSERY, PALAKKAD 678 501.
24. V.T.VIJAYA KUMAR
ENGINEER (S), REF.NO.7610, KR/KKD/00051563
BLOSOM, KAILAS NAGAR, PUDUSSERY
KANJIKODE WEST, PALAKKAD 678 623.
25. GNANAGURUPARAN K
JR.ENGINEER, REF.NO.7787, KR/KKD/00055161
PRATHYUSHA, SRI.SATHYA SAI NAGAR, KALLEKULANGARA P.O
PALAKKAD 678 009.
26. K.N.VIJAYAKUMAR
FOREMAN, REF.NO.7974, KR/KKD/00053706
SAPTHASWARAM, PUDANUR P.O, MUNDUR
PALAKKAD.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS :

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. SUB REGIONAL PROVIDENT FUND COMMISSIONER,
BHAVISHYANIDHI BHAVAN, P.B NO.1806, ERANJIPALAM
KOZHIKODE 673 006.
4. INSTRUMENTATION LTD.,
REPRESENTED BY MANAGING DIRECTOR,
KANJIKODE WEST, PALAKKAD 678 623.

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5. THE CHAIRMAN

**P.F TRUST OF EMPLOYEES OF INSTRUMENTATION LTD,
KOTA ,RAJASTHAN 324005.**

R1 BY ADV. SRI.S.VAIDYANATHAN, CGC

BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE JUDDMENT DATED 4.11.11 IN WPC 6643/2007.

EXHIBIT P2: COPY OF THE JUDGMENT DATED 5.3.13 IN WA 1137/12.

EXHIBIT P3: COPY OF THE JUDGMENT IN WPC 2059/14.

EXHIBIT P4: COPY OF THE JUDGMENT DATED 20.2.15 IN WPC 5446/15.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K.VINOD CHANDRAN, J

W.P.(C).No. 10682 of 2015

Dated 1st April, 2015

JUDGMENT

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 respondents 2 and 3, and the counsel for the 4th respondent.

2. The petitioners are serving 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, it is directed 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.

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.

Writ petition allowed.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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