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. 10683 of 2015 (I)

PETITIONER(S):
----

1. SAJI KURIAN M.J.,
PLANT OPERATOR GRADE II,
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD., PATHANAMTHITTA DAIRY,
NARIAPURAM.P.O., PATHANAMTHITTA -689 513,
PF NO.100328207057-KR/26282/19.

2. K.G.ABRAHAM,
TECHNICIAN GRADE I,
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD., PATHANAMTHITTA DAIRY,
NARIAPURAM.P.O., PATHANAMTHITTA -689 513,
PF NO.100261391542-KR/26282/51.

3. MAMMEN.T.V.,
LAB TECHNICIAN GRADE I,
THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK PRODUCERS UNION LTD., PATHANAMTHITTA DAIRY,
NARIAPURAM.P.O., PATHANAMTHITTA -689 513,
PF NO.100216844485-KR/26282/18.

BY ADV. SRI.P.N.MOHANAN

RESPONDENT(S):
----

1. UNION OF INDIA (UOI),
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF LABOUR & DEPARTMENT OF EMPLOYMENT,
NEW DELHI -110 001.

2. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION(EPFO),
BHAVSHANIDHI BHAVAN, PATTOM PALACE,
THIRUVANANTHAPURAM, PIN -695 004.

2/-

3. THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE-MILK PRODUCERS UNION, REPRESENTED BY ITS MANAGING DIRECTOR, KSHEERA BHAVAN, PATTOM, THIRUVANANTHAPURAM -4.

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

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

vmr.

WP(C).No. 10683 of 2015 (I)

APPENDIX

PETITIONERS EXHIBITS

EXHIBIT P1- A TRUE COPY OF THE JUDGMENT DATED 04/11/2011 IN WP(C) NO.6643/2007.

EXHIBIT P2- A TRUE COPY OF THE JUDGMENT DATED 05/03/2013 IN W.A NO.1137/2012.

EXHIBIT P3- A TRUE COPY OF THE JUDGMENT REPORTED IN W.P.(C)NO.2059/2014.

EXHIBIT P4- A TRUE COPY OF THE JUDGMENT REPORTED IN W.P.(C) NO.5446/2015.

EXHIBIT P5- A TRUE COPY OF THE CIRCULAR NO PENSION/MISC/2005.

EXHIBIT P6- TRUE COPY OF THE PROCEEDINGS DATED 20/02/2007 ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P7- TRUE COPY OF THE ORDER DATED 31/10/2013 OF THE ASSISTANT PROVIDENT FUND COMMISSION.

RESPONDENTS EXHIBITS : NIL.

/TRUE COPY/

P.A.TO JUDGE

vmr

K.VINOD CHANDRAN, J

W.P.(C).No. 10683 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 the 2nd respondent and the counsel for the 3rd respondent.

2. The petitioners are employees of the 3rd respondent Union. 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

//True Copy//