IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 22342 of 2005 (I)

PETITIONER(S):

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1. P. INDIRA DEVI, PARVTHY VILASAM, FORT,
   NEYYATTINKARA, THIRUVANANTHAPURAM.

2. B. SARALA DEVI, VINAYAKA, T.C.9/2223,
   KURUP'S LANE, SASTHAMANGALAM,
   THIRUVANANTHAPURAM.

3. O. SOUDABHAI AMMA, THARA NIVAS,
   SREE VARAHAM, MANACADU P.O.,
   THIRUVANANTHAPURAM.

4. C. SUSHAMMA, SREE DEVI NIVAS,
   13 S, SANKARAN NAIR ROAD,
   KUNDAMKADAVU, PEYAD,
   THIRUVANANTHAPURAM.

BY DR.K.P.KYLASANATHA PILLAY (SENIOR ADVOCATE)
ADVS. SRI.ARUN.B.VARGHESE
SRI.T.P.DEYANANTHAN
SMT.SREEDEVI KYLASANATH

RESPONDENT(S):

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1. UNION OF INDIA,
   REPRESENTED BY MINISTRY OF LABOUR,
   CENTRAL SECRETARIAT, NEW DELHI.

2. CENTRAL PROVIDENT FUND COMMISSIONER,
   BHAVISHYA NIDHI BHAVAN, 14,
   BHIKAJI GRAMA PHACE, NEW DELHI-110 066.

3. REGIONAL PROVIDENT FUND COMMISSIONER,
   BHAVISHYA NIDHI BHAVAN, P.B.NO.1016,
   PATTOM, THRUVANANTHAPURAM.

4. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
   EMPLOYEES PROVIDENT FUND ORGANISATION,
   REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN,
   PATTOM, THIRUVANANTHAPURAM.

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5. SECRETARY, THE TRIVANDRUM CO-OPERATIVE DISTRICT WHOLESALE SOCIETY LTD., NO.4, SASTHAMANGALAM, TRIVANDRUM-12.

R1 BY SRI.N.NAGARESH, A S G OF INDIA
R2 TO R4 BY SRI.N.N. SUGUNAPALAN, (SENIOR ADVOCATE)
SRI.N.SUJIN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE FORM 10 D SUBMITTED BY THE 1ST PETITIONER ON 19.5.1996.

EXHIBIT P2 : TRUE COPY OF COMMUNICATION REJECTING THE FORM 10 D SUBMITTED BY THE 1ST PETITIONER.

EXHIBIT P3 : TRUE COPY OF COMMUNICATION DATED 25.4.1996 ISSUED BY 3RD RESPONDENT.

EXHIBIT P4 : TRUE COPY OF COMMUNICATION ISSUED BY THE 3RD RESPONDENT REJECTING THE APPLICATION OF THE 2ND PETITIONER.

EXHIBIT P5 : TRUE COPY OF THE APPLILCATION IN FORM 10 D DATED 13.3.98 SUBMITTED BY THE 3RD PETITIONER.

EXHIBIT P6 : TRUE COPY OF JOINT REPRESENTATION DATED 14.11.98 SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.

EXHIBIT P7 : TRUE COPY OF JUDGMENT IN O.P.NO.1267/02 OF THIS HON'BLE COURT.

EXHIBIT P8 : TRUE COPY OF JUDGMENT IN O.P.NO.32143/1998 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.22342 of 2005 - I

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Dated this the 7th day of April, 2015

J U D G M E N T

The petitioners are persons, admittedly retired from service prior to the introduction of the Employees Pension Scheme, 1995, who claim an exercise of option and grant of such pension on their remitting the amounts as provided for exercise of option under the Employees Pension Scheme, 1995. The petitioners rely on a judgment of this Court produced at Ext.P7, which is said to have attained finality for reason of the writ appeal and Special Leave Petitions filed by the respondent Organisation having been rejected. The learned Standing Counsel appearing for the 3rd respondent relies on a Division Bench judgment of this Court in W.A No.704 of 2012 dated 24.07.2013 to sustain the rejection of the claim made by the petitioners herein.

2. The Employees Pension Scheme of 1995 came into effect on 16.11.1995; though the Bill introducing such new scheme had been pending since 1993. The Employees Pension Scheme, 1995 was introduced in lieu of the Employees' Family Pension Scheme, 1971 also formulated under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act').

3. The petitioners respectively retired on 31.03.1995, 31.08.1994, 31.08.1994 and 15.11.1993. Admittedly the Employees' Family Pension Scheme, 1971 was in operation, during the tenure of the service of the petitioners and the petitioners though covered under the EPF & MP Act did not exercise an option as required then, to be covered under the Employees' Family Pension Scheme, 1971.

4. The petitioners retired from service, received the entire provident fund dues and when the Employees Pension Scheme, 1995 was introduced, they sought exercise

of an option under the said Scheme. Though the petitioners submit that, they had submitted the option prior to receipt of provident fund dues; by various options dated 22.02.1996, the respondent Organisation would refute such contention.

5. In any event, the consideration of the claim of the petitioners would depend upon the exercise of an option as permitted in the Employees Pension Scheme, 1995. As far as the petitioners are concerned being persons, who are superannuated, before the introduction of the Employees Pension Scheme, 1995, the option should be in accordance with the terms and conditions of paragraphs 6, 7 and 17 of the Employees Pension Scheme, 1995.

6. Paragraph 6(d) specifically permits a person who had been "a member of the Employees Provident Fund and not being a member of the ceased Employees' Family Pension Scheme, 1971 to opt, to exercise option under paragraph 7". The specific tense used in the provision

would indicate that any person, who had been a member of the Employees Pension Scheme, 1995 would be entitled to exercise such option de hors the fact that, he is no longer a member by virtue of retirement or otherwise.

7. The option has to be exercised under paragraph 7(3) which specifies that, the option has to be exercised as per the provisions of paragraph 17 from 16.11.1995. Paragraph 17(3) indicates that on remittance of the past period contribution with interest thereon, w.e.f 01.03.1971 under the Employees' Family Pension Scheme, 1971, any member referred to in paragraph 7(3) would be deemed to have joined the Employees Family Pension Scheme, 1971 and further allowed to continue under the Employees Pension Scheme, 1995 .

8. The Division Bench judgment in W.A No.704 of 2012 specifically declined the prayer of the petitioners therein for reason that paragraph 7(3) required that, the exercise of option in paragraphs 1 and 2 shall be exercised

within a period of six months from 16.11.1995. Paragraphs 6 and 7 were subjected to substantial amendment by G.S.R 134 dated 28.02.1996 w.e.f. 16.03.1996. Hence, as per the provisions now existing in the Employees Pension Scheme, 1995, any person who retired after 01.04.1993 would be entitled to exercise his option to be granted pension under the Employees Pension Scheme, 1995, provided the entire contribution with effect from the date on which the Employees Family Pension Scheme, 1971 would be applicable to them is paid along with specified interest to the respondent Organisation.

9. However, the learned Standing Counsel for the respondent would alertly point out that, permission granted under the amended paragraph 6(d) is only to those persons, who have been a member of the Employees Pension Scheme, 1995 as on 15.11.1995. Admittedly, the petitioners were not members as on 15.11.1995, since, they had retired from employment prior to that.

10. In such circumstance, what would apply are the unamended provisions which read as under.:

> "6. **Membership of the Employees' Pension Fund** - Subject to sub-paragraph (3) of paragraph 1, this Scheme shall apply to every employee,
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> (a) who has been a member of the Employees' Family Pension Scheme, 1971, being hereby repealed;
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> (b) who on or after the 16th November, 1995, becomes a member of the Employees' Provident Fund Scheme, 1952 or of Provident Funds of the Factories and other establishments exempted under Section 17 of the Act, and/or paragraph 27/27-A of the Employees' Provident Fund Scheme, 1952;
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> (c)who has been a member of the Employees' Provident Fund or Provident Funds of factories and other establishments exempted under Section 17 of the Act and/or paragraph 27/27-A of the Employees' Provident Fund Scheme, 1952, immediately before the commencement of this Scheme but not being a member of the Family Pension Scheme opts to exercise his option under paragraph 7.
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> 7. **Option for joining the Scheme** – (1) Every employee who is a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted under Section 17 of the Act and/or paragraph 27/27-A of the Employees Provident Fund Scheme, 1952 but is not a member of the Family Pension Fund immediately before the commencement of this Scheme, shall have the

> option to join this Scheme.
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> (2) Employees referred to in sub-paragraph (1) and the members of the Family Pension Scheme, 1971, who were out of employment on or before the 1st April, 1993 may also exercise the option to become members of this Scheme.
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> (3) The option referred to in sub-paragraph (1) and (2) shall be exercised within a period of six months from the 16th of November, 1995".
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> xx xx xx
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> 17. The employees who opt for the Pension Scheme with effect from 01.04.1993 shall be required to refund contribution along with interest in the Employees' Pension Fund from the said date."

11. Going by the aforesaid Division Bench judgment, what is required is that, such persons who have retired after 01.04.1993, but before 16.11.1995 have to exercise an option within a period of six months from 16.11.1995. The rejection orders of the respondent Organisation issued to the petitioners 1 and 2 at Exts.P2 and P3 indicate that an application has been filed on 22.02.1996. Their applications under Form No. 10 D were dated 22.02.1996. The same having been filed within the six months from 16.11.1995, definitely, the option exercised

by the petitioners 1 and 2 will have to be considered. However, with respect to petitioners 3 and 4, the petitioners contend that, they have also submitted such applications on 22.02.1996. That has to be verified by the respondent Organisation.

12. If the petitioners, who retired prior to 15.11.1995 and who were not members of the Employees Pension Scheme, 1995 have submitted an application within six months from 16.11.1995, the respondent Organisation ought to allow exercise of option under the Employees Pension Scheme, 1995 so as to sanction the pension as provided under the Scheme; provided the amounts specified in paragraph 17 is refunded to the Corporation along with interest.

13. The petitioners are directed to produce a certified copy of the judgment before the respondent Organisation. The respondent Organisation shall consider the individual claims independently, on the basis of the

observations herein above and shall sanction pension in the case of the petitioners 1 and 2 and in the case of the petitioners 3 and 4; if their applications in Form No. 10 D were filed within the time specified above.

14. It is also made clear that, the petitioners shall be issued with a provisional sanction order demanding the amounts due to be refunded to the respondent Organisation after setting off the amount of pension, which would be due to the petitioners with retrospective effect from the attainment of the age of 58 years as provided under the Employees Pension Scheme of 1995. A written order shall be issued at any rate within four months from the date of production of a certified copy of this judgment.

The writ petition would stand allowed with the above observations. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB // true copy //

P.A to Judge