IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 11982 of 2015 (W)

PETITIONER(S):

K.K.VELAYUDHAN AGED 59 YEARS
SUPERVISOR, INSTRUMENTATION LTD., KANJIKODE WEST
PALAKKAD-678 623, EPF A/C.NO.RJ/1139/9032
PENSION A/C.NO.KR/KKD/14754/551

BY ADVS.SRI.ASOK M.CHERIAN
SRI.T.R.RENJITH
SRI.R.ROHITH

RESPONDENT(S):

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1. UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
DEPARTMENT OF EMPLOYMNET, NEW DELHI-110001.

2. CENTRAL PROVIDENT FUND COMMISSIONER (PENSION)
EMPLOYEES PROVIDENT FUND ORGANISATION
BHAVISHYA NIDHI BHAVAN, 14-BHIKAJI CAMA PLACE
NEW DELHI-110066

3. REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION, PATTOM
THIRUVANANTHAPURAM-695 004.

4. SUB REGIONAL PROVIDENT FUND COMMISSIONER,
BHAVISHYANIDHI BHAVAN, P.B.NO.1806, ERANJIPALAM
KOZHIKODE-673 006

5. INSTRUMENTATION LTD., REPRESENTED BY ITS
GENERAL MANAGER, KANJIKODE WEST, PALAKKAD-678 623

6. THE CHAIRMAN,
PROVIDENT FUND TRUST OF EMP[LOYEES OF INTSTRUMENTATION LTD,
KOTTA, RAJASTHAN - 324 005

R1 BY ADV. SMT.SREEKALA K.L., CGC
R2-R4 BY SRI.THOMAS MATHEW NELLIMOOTTIL
R5-R6 BY SR.ADV. SRI N.N. SUGUNAPALAN
R5-R6 BY SRI. N. SUJIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JV

WP(C).No. 11982 of 2015 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **COPY OF CIRCULAR BEARING NO.PENSION/MISC/2005 ISSUED BY THE 2ND RESPONDENT.**

P2: **COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA, DATED 4.11.2011 IN WP(C)NO.6643/2007**

P3: **COPY OF THE JUDGMENT OF THE HON'BLE COURT IN WRIT APPEAL NO.1137/2012**

P4: **COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT IN WP(C) NO.7878/2011 AND CONNECTED CASES, DATED 24-2-2012.**

P5: **COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT IN WP(C) NO.28306/2014 DATED 19-11-2014**

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

K. VINOD CHANDRAN, J.
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W.P.(C) No.11982 of 2015
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Dated this the 9th day of April, 2015

JUDGMENT

I have heard the learned counsel appearing for the petitioner, the learned Central Government Counsel appearing for the 1st respondent, Sri Thomas Mathew Nellimoottil appearing for the respondents 2, 3 & 4 and Sri N.Sujin appearing for the respondents 5 and 6.

2. The petitioner in the Writ Petition is an employee of the 5th respondent. Admittedly, the petitioner is covered under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1995. The petitioner had salary above Rs.6500/-, and is 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 petitioner contends 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 employee shall also submit joint

application, along with his 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.1442/2014. 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.

The writ petition is allowed.

sd/-
K. VINOD CHANDRAN,
JUDGE

jv