IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).NO. 12225 OF 2015 (C)

PETITIONER(S):

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1. P. KALYANIKUTTY, RETIRED WATCHMAN
   INSTRUMENTATION LTD. KANJIKODE WEST, PALAKKAD – 678623.

   RESIDING AT:
   SUNDARSREE, VADAKKANTHARA P.O., PALAKKAD.
   (PF PENSION A/C. NO. KR/KKD/14754/17141)

2. SWAPNA RAMACHANDRAN,
   WIFE OF LATE C.K. SURENDRAN (PF PENSION A/C. NO. KR/KKD/14754/40521)
   "SREE PADMAM", KAVUNGAL PARAMBU, PUDUSSERY, PALAKKAD.

3. GRACY MOL K.J.,
   WIFE OF LATE SAM JOSEPH ABRAHAM (PF PENSION A/C. NO. KR/KKD/14754/358),
   PADIPPURACKAL HOUSE, ANTHINAD P.O., ALLAPPARA – 686651.

4. C.K. MANI,
   WIFE OF LATE VELAYUDHAN M. (PF PENSION A/C. NO. KR/KKD/14754/29832)
   A-37, IL TOWNSHIP, KANJIKODE WEST, PALAKKAD – 678623.

5. ZEENATH S.,
   WIFE OF LATE T.P. RAFEEQ (PF PENSION A/C. NO. KR/KKD/14754/259),
   "ESHA AL", 35/538(4) JAINIMEDU,
   VADAKANTHARA P.O., PALAKKAD – 678012.

6. V. SUMA,
   WIFE OF LATE RAMACHANDRAN P. (PF PENSION A/C. NO. KR/KKD/14754/571),
   "PRATHEEKSHA NIVAS", POOTHANUR P.O.,
   MUNDUR (VIA), PALAKKAD – 678 592.

7. M.K. SUDHARMA,
WIFE OF LATE P.K. RAMADEVAN (PF PENSION A/C. NO. KR/KKD/14754/35560),
"SREERAM NIVAS", OPP. KENDRIYA VIDYALAYA,
KANJIKODE WEST, PALAKKAD – 678623.

8. S. SATHYAPRABHA
WIFE OF LATE T. MANIKANDAN (PF PENSION A/C. NO. KR/KKD/14754/382),
KANNAM PIRIYARAM HOUSE, WEST YAKKARA, PALAKKAD – 678001.

9. USHADEVI M.
WIFE OF LATE C.R. MOHANACHANDRAN (PF PENSION A/C. NO. KR/KKD/14754/42248),
B9 IL TOWNSHIP, KANJIKODE WEST, PALAKKAD - 678623.

BY ADVS.SRI.ASOK M.CHERIAN
SRI.T.R.RENJITH
SRI.R.ROHITH
SRI.K.JANARDHANA SHENOY
SRI.V.K.PRASAD

RESPONDENT(S):
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1. UNION OF INDIA REPRESENTED BY
SECRETARY TO GOVERNMENT OF INDIA,
MINISTRY OF LABOUR AND EMPLOYMENT,
DEPARTMENT OF EMPLOYMENT,
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 – 695004

4. SUB REGIONAL PROVIDENT FUND COMMISSIONER,
   BHAVISHYANIDHI BHAVAN, P.B. NO. 1806,
   ERANJIPALAM, KOZHIKODE-673006.
5. INSTRUMENTATION LTD. REPRESENTED BY ITS GENERAL MANAGER,
   KANJIKODE WEST, PALAKKAD – 678623.

R1 BY ADV. SRI.A.R.GANGADAS, CGC
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R BY SRI.V.KRISHNA MENON
R BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO. 12225 OF 2015

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COPYOF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA, DATED 04.11.2011 IN WPCNO.6643/2007

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

K.VINOD CHANDRAN, J.

W.P.(C).No.12225 of 2015-C

Dated this the 10th day of April, 2015

J U D G M E N T

I have heard the learned counsel appearing for the petitioners, Sri. A R Gangadhas, Standing Counsel for Union of India, the learned Standing Counsel Smt. T.N. Girija appearing for the respondents 2, 3 and 4 and the learned counsel for the 5th respondent Sri. Krishna Menon.

2. The petitioners in the Writ Petition are the retired employees of the 5th respondent. Admittedly, the petitioners were 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, 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. With respect to retired employees, who have drawn their retirement benefits by way of Provident Fund proportionate amounts along with interest accrued in the account as also that accrued after the withdrawal of the Provident Fund amounts, have to be refunded to the Provident Fund Organization. The retired 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.

The writ petition is allowed. No costs.

Sd/-
K.VINOD CHANDRAN,
Judge

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P.A to Judge