

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 22691 of 2006 (B)

PETITIONER(S) :

T.R.SREEDHARAN, THOTTUKADAVIL HOUSE,
K.R.PURAM P.O., SHERTALLAI.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S) :

1. KERALA CONSTRUCTION COMPONENTS LTD.,
PALLIPPURAM, K.R.PURAM P.O., CHERTHALA,
REPRESENTED BY ITS MANAGING DIRECTOR.
2. THE ASSISTANT PROVIDENT FUND
COMMISSIONER(ACCOUNTS) EMPLOYEES PROVIDENT FUND
ORGANISATION, KALOOR, COCHIN.
3. THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
KALOOR, COCHIN.

*** ADDITIONAL R4 IMPEADED**

4. THE DISTRICT LABOUR OFFICER
ALAPPUZHA - 688 001.

*** ADDITIONAL R4 IS IMPEADED AS PER ORDER DATED 09.01.2013 IN I.A.NO.419/2013.**

@ ADDITIONAL R5 IMPEADED

5. THE KERALA STATE INDUSTRIES DEVELOPMENT CORPORATION
(KSIDC).

@ ADDITIONAL R5 IS IMPEADED AS PER ORDER DATED 02.09.2013.

R1 BY ADV. SRI.V.E.ABDUL GAFOOR
R2 & R3 BY ADV. SRI.A.RAJASIMHAN, S.C
R4 BY SR.GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER
ADDL.R5. BY ADVS. SRI.SAJI VARGHESE
SMT.MARIAM MATHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Msd.

WP(C).No. 22691 of 2006 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE ORDER IN CLAIM PETITION NO.121 OF 1988
DATED 27.12.1991 OF THE LABOUR COURT.**
- EXHIBIT P2: TRUE COPY OF THE MEMORANDUM OF SETTLEMENT
NO.NR(1)2239/93 DATED 22.05.1993.**
- EXHIBIT P3: TRUE COPY OF THE REPRESENTATION DATED 08.07.2002.**
- EXHIBIT P4: TRUE COPY OF THE LETTER NO.KCCL/2003-04/214 DATED 23.10.2003.**
- EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.5797 OF 2004
DATED 26.09.2005 OF THE HIGH COURT OF KERALA.**
- EXHIBIT P6: TRUE COPY OF THE PETITION FILED BEFORE THE REGIONAL
PROVIDENT FUND COMMISSIONER, DATED 24.10.2005.**
- EXHIBIT P7: TRUE COPY OF THE ORDER OF THE REGIONAL PROVIDENT FUND
COMMISSIONER DATED 23.01.2006.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K. SURENDRA MOHAN, J.

W.P(C) NO:22691 OF 2006

Dated this the 6th January, 2015.

JUDGMENT

The petitioner was an employee of the first respondent company, which is fully owned by the Government of Kerala. His father was also an employee of the Company. They were dismissed from service on 25.10.1975. They raised an industrial dispute which was the subject matter of I.D.34/84 before the Labour Court, Kollam. As per award dated 21.12.1987 the Labour Court set aside the order of dismissal passed against the petitioner and directed the first respondent to reinstate the petitioner and his father in service with all consequential benefits from the date of dismissal. However, the order of reinstatement was not implemented. Therefore, the petitioner and his father approached the Labour Court again under Section 33C(2) of the Industrial Disputes Act, 1947 claiming the amounts

payable to them as per the award. The same was claim petition No: 121/1988. While the claim petition was pending, the petitioner was reinstated in service by the first respondent on 24.2.1989. However, the father of the petitioner was not reinstated for the reason that, he had attained the age of superannuation in the year 1983. Thereafter, as per Ext.P1 award the claim of the petitioner as well as his father were allowed by the Labour Court. The father of the petitioner was found entitled to an amount of Rs.35,029/- while the petitioner was held entitled to an amount of Rs.69,769/-. The said order is Ext.P1.

2. The first respondent challenged Ext.P1 in O.P.3927/93 before this Court. The said original petition was admitted and an interim order of stay was also granted by this Court. While so, the claim of the petitioner as well as his father were settled before the District Labour Officer, Alappuzha. Ext.P2 is the said settlement. The petitioner thereafter retired from service on 3.12.2001. However, the

petitioner complains that, the provident fund amount paid to him was substantially less than what was actually due to him. The petitioner had remitted his share of contribution promptly and without default. Therefore the petitioner complained to the respondents. He had also approached this Court by filing WPC 5797/2004 seeking the issue of appropriate directions to respondents 2 and 3 to look into his complaints. This Court by judgment dated 26.9.2005 directed respondents 2 and 3 to hear the petitioner and to pass appropriate orders in the matter. Accordingly, Ext.P7 order has been passed by the third respondent holding that, the first respondent had paid sufficient contribution, in accordance with the amount for which, the matter had been settled as per Ext.P2. Thus, it has been held that it was not necessary for the first respondent to remit any further amount as contribution. The petitioner has filed this writ petition aggrieved by Ext.P7.

3. According to Adv. V.G.Arun who appears for the petitioner, Ext.P7 is unsustainable and liable to be set aside.

As per Ext.P1 order the Labour Court had quantified and fixed the actual amount due and payable to the petitioner as wages for the period during which he was kept out of service. Therefore, there cannot be any dispute regarding the quantum of amount due to him. In Ext.P2 settlement, the employer had agreed to remit the provident fund contribution in respect of the petitioner and the amount had been paid to him after retaining the necessary amount for such purpose. In view of the above, it was incumbent on the first respondent to have remitted the entire contribution computed on the wages payable to the petitioner. Reliance is placed on Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the 'Act' for short) and the Scheme thereunder (the 'Scheme' for short). It is contended that, the contribution payable by the employer is stipulated by Section 6 of the Act and paragraph 29 of the Scheme. There is a bar contained in Section 12 of the Act against reduction of wages. Therefore, the liability of the employer to remit contribution is

not controlled by the amount at which parties had settled the dispute in Ext.P2. However, ignoring the above legal position, the third respondent has issued Ext.P7 order relying entirely on Ext.P2 settlement. It is therefore contended that Ext.P7 is liable to be set aside.

4. Adv.A.Rajasimhan who appears for respondents 2 and 3 on the other hand contends that this is a case in which though the Labour Court had quantified the wages payable to the petitioner and his father, the parties had subsequently settled the entire issue by agreeing upon a lesser amount. The lesser amount at which the matter was settled therefore, represents the wages payable to the petitioner. In view of the above contribution has been determined on the basis thereof. According to the counsel in this case, no reduction in wages has been resorted to by the employer so as to attract Section 12 of the Act. It is contended that Ext.P7 does not suffer from any infirmity necessitating an interference with the same by this Court.

5. Adv.Saji Varghese appears for the additional fifth respondent. The additional fifth respondent is the successor in interest of the first respondent, which is no more in existence. The liability of the first respondent having been taken over by the fifth respondent the said respondent was brought on the party array. According to the counsel for the fifth respondent the settlement Ext.P2 was arrived at before the additional fourth respondent, voluntarily by the parties. The workers themselves had reduced the wages quantified by the Labour Court, Kollam as per Ext.P1. This is not a case where wages have been reduced by the employer, so as to attract Section 12 of the Act. Since the settlement Ext.P2 has been accepted by this Court in its judgment in O.P.3927/93 it is contended that Ext.P1 has ceased to be in force. The actual amount payable as back wages to the petitioner has been quantified in Ext.P2. Contribution having been paid in respect of the amount by the employer, it is contended that no further amounts are due or payable by either the first

respondent or the additional fifth respondent. For the above reason, it is pointed out that, the stand of the third respondent in Ext.P7 is justified. The counsel therefore seeks dismissal of the writ petition.

6. Heard. The facts are not in dispute. Though as per Ext.P1 order the amount due as back wages to the petitioner had been quantified, the petitioner had challenged the same in O.P.3927/93 before this Court. As already noticed above the said writ petition had been admitted and an interim order of stay had also been granted. Therefore, the quantification in Ext.P1 had not become final. It was in the above circumstances that, the parties had settled the entire issue before the fourth respondent as per Ext.P2. The contention of the counsel for the petitioner Shri.V.G.Arun is that, the quantification in Ext.P1 has been made relying on a statement submitted by the first respondent regarding the wages payable to the petitioner. Therefore, it is contended that they are not entitled to go back on the same. Though Ext.P1 shows that

the quantification therein was made relying on a statement produced by the first respondent, the fact remains that the said respondent had thereafter challenged Ext.P1 before this Court in O.P.3927/93. Therefore, the quantification in Ext.P1 was the subject matter of dispute in the said writ petition. It was the said dispute that was settled by the parties before the fourth respondent as per Ext.P2. In Ext.P2, the amount quantified and fixed in Ext.P1 has been reduced and a lesser amount has been arrived at. On the basis of the settlement Ext.P2, by judgment dated 29.9.1988, O.P.3927/93 was allowed. It has been noticed in the said judgment that the entire amount payable as per Ext.P2 settlement had been disbursed to the petitioner and his father after adjusting the provident fund and ESI contribution. It has been noticed that, the award of the Labour Court as well as Ext.P1 order stood satisfied.

7. The above being the position, the contention now raised that the petitioner would have to be paid provident fund

on the basis of the amount that has been quantified as per Ext.P1 order of the Labour Court cannot be accepted. In the present case, the employer has not reduced any amount so as to attract the bar under Section 12 of the Act. The contribution has admittedly been paid in respect of the amount in Ext.P2. In view of the above, I do not find any infirmity in Ext.P7 justifying an interference with the same. This writ petition is for the above reasons dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

jj

/True copy/

