IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 17272 of 2009 (D)

PETITIONER :

V.RAVINDRA NATH, RETIRED CASHIER,
MANNAM SUGAR MILLS CO-OPERATIVE LIMITED
RESIDING AT: USHUS, VALAMCHUZHY
PATHANAMTHITTA-689 645.

BY ADVS.SRI.V.N.ACHUTHA KURUP (SR.)
SMT.LEENA MURALI
SRI.BINDU SREEKUMAR

RESPONDENTS:

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1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, MINISTRY OF LABOUR
GOVERNMENT OF INDIA, NEW DELHI.

2. EMPLOYEES PROVIDENT FUND ORGANISATION,
REPRESENTED BY THE REGIONAL PROVIDENT FUND
COMMISSIONER, REGIOANL OFFICE, BHAVISHYANIDHI
BHAVAN, PATTOM, THIRUVANANTHAPURAM-695 004.

3. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES PROVIDENT FUND, ORGANISATION
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM
THIRUVANANTHAPURAM-695 004.

R1 BY SRI N NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & 3 BY ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.17272 OF 2009

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: PHOTOCOPY OF THE PENSION PAYMENT ORDER NO. KR/TVM/20289 DATED NIL ISSUED BY THE 3RD REESPONDENT TO THE PETITIONER

EXT.P2: PHOTOCOPY OF THE LETTER NO KR/TVM/P.CELL/EPS/PPO/20289 DT 28.11.2000 ISSUED BY THE 3RD RESPONDENT.

EXT.P3: PHOTOCOPY OF THE REQUEST DATED 02.06.2008 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

EXT.P4: PHOTOCOPY OF the LETTER NO.KR/TVM/PEN.CEL T(4) PPO/20289/08/2519 DATED 17.11.2008 OF THE 2ND RESPONDENT

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

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W.P(C) No. 17272 of 2009

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Dated this the 8th day of April, 2015

J U D G M E N T

The issue raised in the above writ petition is covered by the judgment in W.P.(C).18389 of 2013 dated 12.02.2015, which reads as under.

> "The question raised in the above writ petition is with respect to whether the pensioners under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short "EPF & MP Act") are eligible to be restored with the commuted portion of pension after a specific period. The aforesaid question was answered by this Court in a writ petition filed by the Provident Fund Pensioners Association by judgment dated 09.12.2013 in W.P.(C).1362 of 2013. The provisions in the EPF & MP Act as also the binding precedents on restoration of commutation were noticed and it was held so :-
>
> > "What is to be immediately noticed is that all the above decisions were rendered in the context of pension Schemes implemented and operated by the employer. Herein the Scheme has been brought in, as a welfare measure, compelling contributions by statute from the employer and deduction from the employee's salary during the period of employment. The employer has no role in the working of the Scheme and does not at all bear the liability except to the extent of the contributions, which stop with the retirement of the employee. The Organization constituted under the Act has the responsibility of administering the fund.
> >
> > Central Government Pensioners Association v. Union of India (2008 (3) KLT 226) raised the

Government's disinclination to consider the reduction of the period for restoration of commuted amounts from 15 years to 12 years, despite recommendations of the Vth Pay Commission. While conceding the Government's right to evaluate the financial implications and decide upon the recommendations, it was pointed out that such decision should nevertheless be supported by reasons. For the sole reason of the counter affidavit, having not disclosed any reasons; the Union Government was directed to take a decision on the representations.

Here also, the financial implications ought to be considered by the Central Government, which, however, is not the employer and is not bound by the obligations of an employer since the pension fund is an independent fund constituted under a Welfare Legislation. To draw a distinction between the obligations of an employer and the obligations of a Welfare State would be begging the question. But, the pensioners have with open eyes exercised an option for commutation. Many would not have been fortunate to draw pension for long and on their death their dependants would have been paid a lump sum amount as provided under the Scheme. With the increasing cost of living and the all pervading commercialization what the petitioners contend is that their increased mortality works to their disadvantage. They contend that they are only a few and there would not be any huge liability on the Fund, if their commuted portion is restored. However, that alone cannot sway this Court to issue any positive direction since, then even the dependants of pensioners who expired would raise a claim for enhanced lump sum compensation. These are matters which are best left to the Government and the Organization to decide after looking at the balancing considerations of financial viability and the welfare of the pensioners. The State which came forward with a welfare legislation to provide succour also has the responsibility to ensure dignity of life, at least bordering on reasonable sustenance. It will not be proper for this Court to issue positive directions but the Government can very well consider the grievances projected in the Writ petition and

> examine the financial viability, if a proper representation is made.
>
> In such circumstances, it may not be proper for this Court to issue any positive direction and the liberty reserved in the aforesaid judgment would be applicable to the petitioner also."

The writ petition stands closed on the above terms. Parties are left to suffer their respective costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge