IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

WP(C).No. 13108 of 2015 (K)

PETITIONER(S) :
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1. P.PRAMACHANDRAN,
   'CHOTHI', THALIYIL KUZHICHAL, P.O PARASSINIKKADAVU,
   KANNUR-670 563.

2. M.A.RAVEENDRAN,
   'M.A.HOUSE', KUZHICHAL, P.O PARASSINIKKADAVU,
   KANNUR-670 563.

3. CHANDRAN A.P.,
   'GEETHAM', P.O.KALLIASSERY, KANNUR-670 562.

4. K.V.RAMACHANDRAN,
   'USHASS', HAJIMOTTA, KALLIASSERY P.O,
   KANNUR-670 562.

5. PADMAVATHI E.P.,
   EASAVASYAM, VADESWARAM P.O, AROLI,
   KANNUR-670 566.

6. V.RADHAM,
   'SARATH', ANCHAMPEEDIKA, VIA MATTAMMAL,
   KANNUR-670 331.

7. P.V.SANTHANAVALLY,
   'ADITHYA', THALIYIL, PO. KUC, KANNUR-670 567.

8. P.V.PURUSHOTHAMAN,
   'AAKARSH', KALLIASSERY P.O, KANNUR-670 562.

9. JANAKI V.,
   'SAYOOJYAM', MANGAD, KALLIASSERY P.O,
   KANNUR-670 562.

10. GOPINATHAN V.V.,
    'ANURAG', P.O.ANCHAMPEEDIKA,
    KANNUR-670 331.

11. T.P.VENUGOPALAN,
    'SOBHA NIVAS', POOMANGALAM, P.O.PANNIYOOR,
    KANNUR-670 142.

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12. C.K.RADHAMANI,
CHENICHERI, KANDAMBETH HOUSE, KALLIASSERY P.O,
KANNUR-670 562.

13. O.V.ANANDAN,
'ORAVANKARA', MANGAD, KALLIASSERY P.O,
KANNUR-670 562.

14. P.MALLIKA,
'SHANGRILA', BAKKALAM, P.O.KANUL, KANNUR-670 562.

15. C.PADMINI,
CHENAL HOUSE, SREESHYLEM, THALIYIL,
P.O.KALLIASSERY, KANNUR-670 562.

BY ADVS.SRI.P.RAMAKRISHNAN
SMT.PREETHI KESAVAN
SRI.S.K.HARISH
SRI.C.ANIL KUMAR
SMT.ASHA K.SHENOY

RESPONDENT(S) :
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1. KELTRON COMPONENT COMPLEX LIMITED,
KALLIASSERY P.O, KANNUR-670 562,
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, V.K.COMPLEX,
FORT ROAD, KANNUR-670 001.

3. THE CENTRAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
BHAVISHYANIDHI BHAVAN, NEW DELHI-110 066.

4. UNION OF INDIA (UOI),
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF LABOUR & EMPLOYMENT, SHRAM SAKTHI BHAVAN,
RAFFI MARGH, NEW DELHI-110 001.

R1 BY ADV.SRI.V.ABRAHAM MARKOS
R2 & R3 BY ADV.SMT.T.N.GIRIJA, S.C
R4 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Msd.

WP(C).No. 13108 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: **TRUE COPY OF DETAILS CONCERNING THE PETITIONERS, INCLUDING THEIR INDIVIDUAL ACCOUNT NUMBERS ISSUED BY THE EMPLOYEES PROVIDENT FUND DEPARTMENT.**

EXHIBIT P2: **TRUE COPY OF CIRCULAR NO.PENSION/MISC/2005 DATED NIL, ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT.**

EXHIBIT P3: **TRUE COPY OF JUDGMENT DATED 04.11.2011 IN W.P.(C).NO.9929/2007.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K.VINOD CHANDRAN, J.

W.P.(C).No.13108 of 2015-K

Dated this the 28th day of April, 2015

J U D G M E N T

I have heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the 1st respondent,the learned Standing Counsel Smt. T.N. Girija appearing for the Provident Fund Organisation and Sri. N. Nagaresh, the learned Assistant Solicitor General appearing for Union of India.

2. All the petitioners are retired from the service of the 1st respondent. Admittedly, the petitioners are 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, it is directed that the 8.33% of the employer's contribution, proportionate to the salary of the employees, 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.

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.

Writ petition allowed.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge