

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

W.P.(C).No.17197 of 2011 (Y)

PETITIONER(S):-

MELKADAKKAVOOR KSHEERA VYAVASAYA
SAHAKARANA SANGHAM LIMITED NO.T.17(D),
KADAKKAVOOR, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.RAMAKRISHNAN.

RESPONDENT(S):-

1. ASSISTANT PROVIDENT FUND COMMISSIONER,
EPF ORGANIZATION, REGIONAL OFFICE, PATTOM,
THIRUVANANTHAPURAM - 695 004.
2. THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
SCOPE MINAR, CORE 2, 4TH FLOOR, LAXMI NAGAR DISTRICT CENTRE,
NEW DELHI-110092.

R1 BY SENIOR ADVOCATE SRI.N.N. SUGUNAPALAN &
STANDING COUNSEL SMT.T.N.GIRIJA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P(C).NO.17197 OF 2011-Y

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF LETTER DATED 6.3.2006 OF THE 1ST RESPONDENT.
- EXT.P2 TRUE COPY OF THE ORDER DATED 29.8.06 / 12.9.06.
- EXT.P3 TRUE COPY OF APPEAL MEMORANDUM SUBMITTED BEFORE
 THE 2ND RESPONDENT.
- EXT.P4 TRUE COPY OF ORDER DATED 17.3.2011 IN ATANO.626(7) 2006.
- EXT.P5 TRUE COPY OF COMMUNICATION DATED 27.05.2011 RECEIVED
 BY THE PETITIONER FROM THE KERALA STATE CO-OPERATIVE
 EMPLOYEES PENSION BOARD.
- EXT.P6 TRUE COPY IF 1ST RESPONDENT HAS ISSUED A NOTICE
 DATED 10.6.2011.

RESPONDENT'S EXHIBITS:-

NIL.

Vku/

(true copy)

K.Vinod Chandran, J.

W.P.(C).No.17197 of 2011-Y

Dated this the 23rd day of January, 2015

JUDGMENT

The petitioner is a Co-operative Society, which sought to be covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"]. The petitioner objected to the coverage on the ground that the petitioner is covered by a pension scheme of the Government of Kerala; introduced by the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 [for brevity "Pension Scheme"]. The assessing authority under Section 7A refused to accept the said contention and assessed the petitioner as per Exhibit P2. The appeal filed against the said order was dismissed as per Exhibit P4.

2. There was a conflict between the two schemes and the employees of the societies as also certain societies were before this Court challenging the notification issued by the State Government. The dispute agitated before this Court was as to which of the Schemes is more beneficial. In any event, all

those writ petitions were allowed by the learned Single, setting aside the notification. The Pension Board filed appeals from the judgment of the learned Single Judge, which was decided by a Division Bench in the decision reported in ***Kerala State Co-op. Employees Pension Board v. Udayakumar* [2012 (3) KLT 820]**.

3. The Division Bench though confirmed the judgment of the learned Single Judge, was of the opinion that option should be given to the employees as to whether they would continue under the Pension Scheme, 1995 of the EPF Organization or the Pension Scheme of the State. However, this was with respect to the persons who are already covered under the EPF Act. In fact, on the basis of the aforesaid decision, contributions made earlier to the EPF account was also directed to be transferred to the State Co-operative Pension Board. The Pension Board has taken the matter to the Supreme Court and it is also submitted that a review petition is pending before the Division Bench. In such circumstances, as of now, the petitioner's coverage cannot be insisted upon.

4. One other contention raised is that, the appellate authority's order indicates only 31 out of the 54 employees were covered under the Pension Scheme. That is refuted by the petitioner by production of Exhibit P5, which would indicate that the employees are covered under the Pension Scheme. Hence, that finding has necessarily to be vacated. The assessment order and the recovery initiated would be kept in abeyance till a decision is arrived at in the review petition or by the Hon'ble Supreme Court. The coverage of the petitioner shall be subject to such orders in the review petition by the Division Bench of this Court or by the decision of the Hon'ble Supreme Court.

The writ petition is disposed of as above. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

vkul/-

(true copy)