IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 18389 of 2013 (W)

PETITIONER(S):

P.G.PADMARAJAN, AGED 71 YEARS,
S/O.LATE V.GOVINDAN, VAISHNAVAM, PMC-XIX/198,
H.NO.4, CHAITHANYA NAGAR, PERUMBAVOOR - 683 542.

BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENT(S):
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1. **EMPLOYEES' PROVIDENT FUND ORGANISATION,**
   MINISTRY OF LABOUR AND EMPLOYMENT,
   SUB REGIONAL OFFICE, 36/685A, BHAVISHYA NIDHI BHAVAN,
   KALOOR, KOCHI-682 017,
   REPRESENTED BY ITS REGIONAL,
   PROVIDENT FUND COMMISSIONER.

2. **REGIONAL PROVIDENT FUND COMMISSIONER,**
   EMPLOYEES PROVIDENT FUND ORGANISATION,
   SUB REGIONAL OFFICE, 36/685A, BHAVISHYA NIDHI BHAVAN,
   KALOOR, KOCHI-682 017.

BY DR.S.GOPAKUMARAN NAIR, SENIOR ADVOCATE
ADV. SRI.A.RAJASIMHAN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 18389 of 2013 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PENSION PAYMENT ORDER BEARING NO.KR/KCH/32516 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE LETTER BEARING KR/PF/PENSION/99/8429 DTD.30-7-2001 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P3: TRUE COPY OF THE REPRESENTATION DT.15-12-2012 SUBMITTED BY THE PETITIONER TO THE HON'BLE MINISTER OF STATE OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA.

EXHIBIT P4: TRUE COPY OF THE REPLY LETTER BEARING NO.KR/KC/PPO/32561/ PEN-CELL (2)/2012-13/16690-A DTD.7-3-2012/11-3-13 ISSUED BY 2ND RESPONDENT TO THE CENTRAL PROVIDENT FUND COMMISSIONER AT NEW DELHI.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K.VINOD CHANDRAN, J

W.P.(C).No. 18389 of 2013

Dated 12th February, 2015

JUDGMENT

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 Organisation 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 commercialisation 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.

2. 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 would stand closed following the aforesaid judgment. Parties are left to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

//True Copy//