

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 25172 of 2008 (V)

PETITIONER:

HOSDURG SERVICE CO.OP.BANK LTD.,
REP. BY ITS SECRETARY, K.KAMALAKSHA, HOSDURG
KANHANGAD.

BY ADV. SRI.DINESH RAO.A

RESPONDENT(S):

1. ASST.PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANIZATION
SUB REGIONAL OFFICE, V.K.COMPLEX, FORT ROAD
KANNUR.
2. ENFORCEMENT OFFICER,
INSPECTORATE OF EMPLOYEES, PROVIDENT FUND
TATA COMPLEX, TALAP, KANNUR.
3. KERALA STATE CO.OP.EMPLOYEES
PENSION BOARD, 3RD FLOOR, KERALA STATE
CO.OP.BUILDING, OVER BRIDGE JN., THIRUVANANTHAPURAM.
4. STATE OF KERALA, REP. BY THE CHIEF
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

,R1 & 2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.
R1 & 2 BY ADV. DR.ABRAHAM P.MEACHINKARA,SC,EPF ORGANIS
R4 BY ADV. SRI.K.R.SUNIL,SC,CO-OP.EMP.PENSION BOAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF THE STATEMENT SHOWING REMITTANCE OF THE PENSION FUND CONTRIBUTION MADE TO THE KERALA CO-OPERATIVE EMPLOYEES PENSION BOARD.

EXT.P2: TRUE COPY OF THE PAY-IN-SLIP FOR THE PAYMENT OF CONTRIBUTION FOR THE MONTH JANUARY, 2008

EXT.P2(A): TRUE COPY OF THE PAY-IN-SLIP FOR THE PAYMENT OF CONTRIBUTION FOR THE MONTH FEBRUARY, 2008

EXT.P2(B): TRUE COPY OF THE PAY-IN-SLIP FOR THE PAYMENT OF CONTRIBUTION FOR THE MONTH MARCH, 2008

EXT.P2(C): TRUE COPY OF THE PAY-IN-SLIP FOR THE PAYMENT OF CONTRIBUTION FOR THE MONTH APRIL, 2008

EXT.P2(D): TRUE COPY OF THE PAY-IN-SLIP FOR THE PAYMENT OF CONTRIBUTION FOR THE MONTH MAY, 2008

EXT.P2(E): TRUE COPY OF THE PAY-IN-SLIP FOR THE PAYMENT OF CONTRIBUTION FOR THE MONTH JUNE, 2008

EXT.P2(F): TRUE COPY OF THE PAY-IN-SLIP FOR THE PAYMENT OF CONTRIBUTION FOR THE MONTH JULY, 2008

EXT.P3: TRUE COPY OF THE COMMUNICATION DATED 13.07.2000 ISSUED BY THE 1ST RESPONDENT

EXT.P4: TRUE COPY OF THE JUDGMENT DATED 21.11.2005 IN O P NO. 21073/2000 OF THIS HON'BLE COURT

EXT.P5: TRUE COPY OF THE COMMUNICATION DATED 07.07.2008 ISSUED BY THE 1ST RESPONDENT

EXT.P6: TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 14.07.2008 TO THE 1ST RESPONDENT

EXT.P7: TRUE COPY OF THE COMMUNICATION DATED 23.07.2008 ISSUED BY THE 1ST RESPONDENT

EXT.P8: TRUE COPY OF THE LIST OF EMPLOYEES AS ON 30.06.2008 WITH RESPECT TO THE PETITIONER SOCIETY.

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RESPONDENTS EXHIBITS:

EXT.R1(A): LETTER NO. 18043/ENF.1(2)/2000-2001 DATED 12.07.2000 ISSUED BY THE 1ST RESPONDENT

EXT.R1(B) LETTER NO. EM(2)59438/2007 DATED 13.05.2009 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No.25172 of 2008

Dated this the 19th day of March, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P7 order for coverage under Employees Provident Fund Act and Miscellaneous Provisions Act, 1952 and proceedings issued under Section 7A of the Act. The primary contention is that the petitioner is entitled to exemption under sub section (a) of Section 16 since the petitioner is a Primary Agricultural Credit Society registered as such under Kerala Co-operative Societies Act, 1969 and employees less than 50 persons and working without the aid of power. The petitioner also contends that the petitioner was earlier before this Court and a similar notice was quashed as per Ext.P1 judgment of this Court, which has

attained finality.

2. The learned counsel for the respondent Organisation however contends that the judgment relates only with respect to the pension Scheme as brought out by the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 which was implemented in the year 1995 itself. But, the Society remains covered under the EPF & MP Act; exempted only from the EPF Pension Scheme alone, by a notification G.O(Ms) NO.44/2006/LBR dated 19.06.2006. The judgment at Ext.P4 considered the said notification as interpreted in a decision of this Court in Kodukulanji Service Co-operative Bank v. State of Kerala [2003 (1) KLT 250]. Subsequently a Division Bench in the decision reported in Kerala State Co-operative Pension Board v. Udayakumar [2012 (3) KLT 820] also held that such pension is the option of the

employee of the Co-operative Society.

3. Herein the contention is not with respect to the pension alone but the applicability of the Act as such. Admittedly, the petitioner has more than 20 employees which requires coverage under the EPF & MP Act. The claim of the petitioner is the exemption under Section 16(1)(a). That is a dispute which has to be considered when 7A proceedings are proceeded with, as is indicated in sub-clause (a) of Section 7A(1). The respondent Organisation has not been able to consider such dispute since Section 7A proceedings could never go beyond the issuance of notice for the petitioner having approached this Court repeatedly and obtained a stay.

4. In such circumstance, there would be no proceeding on Ext.P7 for the mere reason of long elapse of time. The respondent Organisation shall issue fresh notice, if so

advised, and proceed with Section 7A enquiry and also consider the question of petitioner's eligibility for exemption under Section 16(1)(a) when such proceedings are initiated. It is made clear that the Employees Pension Scheme 1995 under the EPF & MP Act would not be made applicable to the petitioner since the learned counsel for the Pension Board also confirms that the petitioner and its employees are covered under the Kerala Co-operative Societies Employees Self Financing Scheme, 1994.

Writ petition is disposed of with the above observation.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge