

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 37102 of 2004 (P)

PETITIONER(S):

1. PRIVATE MOTOR WORKERS INDUSTRIAL
CO-OPERATIVE SOCIETY LTD.NO. 4203
KAYAMKULAM REPRESENTED BY ITS SECRETARY
S.RAVINDRA KURUP.
2. PRIVATE MOTOR WORKERS INDUSTRIAL
CO-OPERATIVE SOCIETY LTD.NO. 4203
KAYAMKULAM-REPRESENTED BY ITS
PRESIDENT C.SUDHAKARA KURUP.

BY ADVS.SRI.M.K.DAMODARAN (SR.)
SRI.A.ANILKUMAR MENON
SRI.I.V.PRAMOD

RESPONDENT(S):

1. THE CENTRAL PROVIDENT FUND COMMISSIONER,
BHAVISHYA NIDHI BHAVAN, 14, BHIKKAJI GRAMA
PHACE, NEW DELHI-110 066.
2. THE REGIONAL PROVIDENT FUND COMMISSIONER
BHAVISHYA NIDHI BHAVAN, KOCHI.
3. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, SUB REGIONAL OFFICE, 36/685A
BHAVISHYA NIDHI BHAVAN, KALOOR, KOCHI-17.
4. THE ENFORCEMENT OFFICER,
EMPLOYMENT PROVIDENT FUND ORGANISATION
M.M.BUILDINGS, NEAR STONE BRIDGE, IRON BRIDGE P.O.
ALAPPUZHA.

BY ADV. SRI.S.GOPAKUMARAN NAIR, SC, P.F.
SRI. PRASANTH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXHIBITS

P1- TRUE COPY OF THE COMMUNICATION DATED 15.11.2000 SUBMITTED BY THE PETITIONER TO R3

P2- TRUE COPY OF THE LETTER NO.KR/KC/Enf II (4)/2000 DATED 15.11.00 ISSUED BY R3

P3- TRUE COPY OF THE LETTER NO.KR/KC/Enf II (4)/2000 DATED 15.11.00 ISSUED BY R3 TO THE BRANCH MANAGER, SBT

P4- TRUE COPY OF THE LETTER NO.KR/KC/1864/Enf II (4)/ 2001 DATED 8.2.2001 ISSUED BY R3 TO THE PETITIONER

P5- TRUE COPY OF THE LETTER DATED 9.4.2001 SUBMITTED BY THE PETITIONER TO R3

P6- TRUE COPY OF THE LETTER DATED 17.4.2001 SUBMITTED BY THE PETITIONER BEFORE R3

P7- TRUE COPY OF THE LETTER DATED 18.4.2001 SUBMITTED BY THE PETITIONER TO R3

P8- TRUE COPY OF THE PROCEEDINGS NO.KR/KC/1864/Enf II (4) /2001/2430 DATED 6.7.2001 ISSUED BY R3

P9- TRUE COPY OF THE REPRESENTATION DATED 23.7.2001 SUBMITTED BY THE PETITIONER TO R3

P10- TRUE COPY OF THE NOTICE NO.KR/1864/ALPY/EO/PVJ/2001/232 DATED 24.7.2001 ISSUED BY R4 TO THE PETITIONER

P11- TRUE COPY OF THE COMMUNICATION DATED 31.7.2001 SUBMITTED BY THE PETITIONER BEFORE R3

P12- TRUE COPY OF THE PROHIBITORY ORDER BEARING NO.KR/KC/1864/RECOVERY/2000-01 DATED 1.8.2001 ISSUED TO THE PETITIONER

P13- TRUE COPY OF THE NOTICE NO.KR/1864/EO/PVJ/2001/257 DATED 3.8.2001 ISSUED BY R4

P14- TRUE COPY OF THE REPRESENTATION DATED 17.8.2001 SUBMITTED BEFORE R2

P15- TRUE COPY OF THE DEMAND DRAFT BEARING NO.186841 DRAWN ON SBT, ERNAKULAM IN FAVOUR OF THE RESPONDENT FOR AN AMOUNT OF RS.47,993

P16- TRUE COPY OF THE COMMUNICATION DATED 24.8.2001 BEARING NO.KR/KCH/CIRCLE/36/KR/1064/06-2001/Enf.II (4) ISSUED BY R3

P17- TRUE COPY OF THE PROCEEDINGS NO.KR/1864/Enf II (4)/201/4980 DATED 20.9.2001 ISSUED BY R3

P18- TRUE COPY OF THE NOTICE NO.KR/1864/EO/PVJ/2001-420A DATED 28.9.2001 ISSUED BY R4

P19- TRUE COPIES OF THE CHALANS SHOWING THE REMITTANCE OF THE AMOUNT

P20- TRUE COPY OF THE JUDGMENT DATED 21.2.2002 IN OP. 5490 OF 2002

P21- TRUE COPY OF THE PROCEEDINGS OF R3

P22- TRUE COPY OF THE PETITION DATED 6.5.2002

P23- TRUE COPY OF THE LETTER DATED 8.8.003 OF R3

ANNEXURES

AI- TRUE COPY OF THE CHALLAN DATED 7.11.2003

A-II- TRUE COPY OF THE LATEST RETURNS

//True Copy//

P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 37102 of 2004

Dated 11th March, 2015

JUDGMENT

The petitioner seeks exemption under Section 16(1) (a) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act) and also seek consideration of Ext.P22. A relief also is sought insofar as setting aside Ext.P23 communication of the respondent Organization.

2. Briefly stated, the petitioner is a Co-operative Society carrying on a Motor Transport Undertaking, established in the year 1957. The Society, which had 200 employees, was covered under the EPF & MP Act. A reading of Ext.P8 order would indicate that such coverage was effective from 31.10.1965 and the petitioner was assessed under code No.KR/1864. Proceedings were taken for default in making contributions from the wage period 7/2000 to 3/2001 as indicated in Ext.P8. Subsequently,

Section 14B damages is also said to have been imposed. No appeal seems to have been filed from the said order. It is pertinent to notice that not even an order imposing damages under Section 14B has been produced herein.

3. At the outset, the claim of exemption cannot be sustained since, admittedly, the petitioners/establishment was covered under the EPF & MP Act and contributions were paid. Section 1(5) of the EPF & MP Act specifically provides that an establishment to which the Act applies, shall continue to be governed by the provisions, notwithstanding the fact that the number of persons employed therein at any time falls below the minimum required. Said restriction equally applies to an exemption sought under Section 16(1)(a). Section 16(1)(a) exempts a Co-operative Society which is not operating on the strength of power and which has employees below 50. The petitioners had initially employed 200 persons. Hence, the factum of employee strength falling below 50 does not at all help the petitioners. Claim for exemption is hence rejected.

4. Ext.P22 is a representation allegedly filed for waiver of penal damages. The Regional Provident Fund Commissioner before whom Ext.P22 has been filed, has no authority to effect such waiver. That is what has been communicated by Ext.P23. Ext.P23 further states that even the power of waiver by the Central Board, as conferred by the Statute, does not extend to the petitioner on the fact situation projected. Annexure-II produced by the respondent Organization in its counter affidavit indicates a return having been filed wherein the total employee strength is stated to be 129. For all the above reasons, there would be no requirement to direct consideration of Ext.P22. Ext.P23 also cannot be interfered with.

5. However, if the petitioners are desirous of settling the amounts in instalments, they shall approach the authority within a period of three weeks from the date of receipt of a copy of this judgment. The authority shall intimate the quantification of the amounts due from the

petitioners as also any interest due, as per the Statute and the same shall be directed to be paid in six monthly instalments. If the petitioners do not approach the authority or commit default in any of the instalments then necessarily the respondent Organization should proceed for recovery.

The writ petition is dismissed with the above direction.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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