IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

WP(C).No. 29539 of 2014 (N)

PETITIONERS:

1. K.V.ANIL KUMAR AGED 58 YEARS
S/O. N.VISWAMBHARAN, RETIRED MANAGER
SIDCO RAW MATERIAL DEPOT, KOTTAYAM, 'ARDRA'
VIKAS NAGAR-113, PATTATHANAM P.O., KOLLAM.

2. P.M.JAYASREE
D/O. LATE P.K.MADHAVAN, RETIRED MANAGER, SIDCO
R.M.DEPOT, ALAPPUZHA, 'SREEVALSAM'
S.L.PURAM P.O., CHERTHALA, ALAPPUZHA.

3. LISAMMA JOSEPH
W/O. T.G.BABU, RETIRED MANAGER(M), RAW MATERIAL DEPOT
ALAPPUZHA, 'PADMALISA', KOMMADY
ALAPPUZHA NORTH P.O., ALAPPUZHA-688 007.

4. REMADEVI T.A.
D/O. T.R.AYYAPPAN NAIR, RETIRED MANAGER
SIDCO MARKETING DIVISION, ERNAKULAM, GEETHANJALI LANE
VALIYAKULAM, UDAYAMPEROOR, ERNAKULAM DISTRICT.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.JOHNSON JOSE PANJIKKARAN

RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
DEPARTMENT OF EMPLOYMENT, NEW DELHI-110 001.

2. REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES' PROVIDENT FUND ORGANISATION (EPFO)
MINISTRY OF LABOUR, GOVERNMENT OF INDIA, PATTOM
THIRUVANANTHAPURAM-695 004.

3. ASSISTANT PROVIDENT FUND COMMISSIONER (PENSION)
SUB REGIONAL OFFICE, EMPLOYEES' PROVIDENT FUND ORGANISATION (EPFO)
BHAVISHYANIDHI BHAVAN, KALOOR, ERNAKULAM-682 017.

4. ASSISTANT PROVIDENT FUND COMMISSIONER (PENSION)
SUB REGIONAL OFFICE
EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO), KOLLAM-691 001.

5. THE KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION
P.B.NO.50, HOUSING BOARD BUILDING, SANTHI NAGAR
THIRUVANANTGHAPURAM-695 001, REPRESENTED BY ITS MANAGING DIRECTOR.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R5 BY SMT.K.K.RAZIA
GOVERNMENT PLEADER ADV.BIJU MEENATOOR
R2 - 4 BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE PROCEEDINGS DATED 12.2.2014 OF THE 5TH RESPONDENT ALONG WITH THE PENSION PAYMENT ORDER OF THE FIRST PETITIONER.

EXT.P2: TRUE COPY OF THE PROCEEDINGS DATED 13.5.2014 OF THE 5TH RESPONDENT ALONG WITH THE PENSION PAYMENT ORDER OF THE SECOND PETITIONER.

EXT.P3: TRUE COPY OF THE PROCEEDINGS DATED 3.10.2013 OF THE 5TH RESPONDENT ALONG WITH THE PENSION PAYMENT ORDER OF THE THIRD PETITIONER.

EXT.P4: TRUE COPY OF THE PROCEEDINGS DATED 16.3.2013 OF THE 5TH RESPONDENT ALONG WITH THE PENSION PAYMENT ORDER OF THE FOURTH PETITIONER.

EXT.P5: TRUE COPY OF THE CIRCULAR BEARING NO.PENSION/MISC/2005.

EXT.P6: TRUE COPY OF THE ORDER NO.KR/TVM/PEN.CELL(4) KMML.KR/10315/07 DATED 20.2.2007 ISSUED BY THE SECOND RESPONDENT.

EXT.P7: TRUE COPY OF THE JUDGMENT DATED 4.11.2011 IN W.P.(C)NO.6643 OF 2007 AND CONNECTED CASES.

EXT.P8: TRUE COPY OF THE JUDGMENT DATED 5.3.2013 IN W.A.NO.1137 OF 2012.

EXT.P9: TRUE COPY OF THE JUDGMENT DATED 4.3.2014 IN W.P.(C)NO.2059 OF 2014.

EXT.P10: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE FIRST PETITIONER BEFORE THE FOURTH RESPONDENT DATED 29.10.2014.

EXT.P11: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE SECOND PETITIONER BEFORE THE THIRD RESPONDENT DATED 27.10.2014.

EXT.P12: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE THIRD PETITIONER BEFORE THE THIRD RESPONDENT DATED 28.10.2014.

EXT.P13: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE FOURTH PETITIONER BEFORE THE THIRD RESPONDENT DATED 28.10.2014.

EXT.P14: TRUE COPY OF THE POSTAL RECEIPTS INDICATING ISSUANCE OF EXTS.P11 AND P12.

EXT.P15: TRUE COPY OF THE ORDER DATED 31.10.2013 OF THE ASSISTANT PROVIDENT FUND COMMISSIONER.

EXT.P16: TRUE COPY OF THE JUDGMENT DATED 5.6.2014 IN W.P.(C)NO.8298 OF 2014.

// TRUE COPY //

P.A.TO JUDGE

K.VINOD CHANDRAN, J.

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W.P.(C)No.29539 OF 2014

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Dated this the 3rd day of February, 2015

JUDGMENT

I have heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the respondents 2, 3 and 4, the learned Assistant Solicitor General appearing for the 1st respondent and the learned Standing Counsel for the 5th respondent.

2. The petitioners in the Writ Petition are the retired employees of the 5th respondent. Admittedly, the petitioners were 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 deduction 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, this writ petition is also disposed of directing that the 8.33% of the employer's contribution, proportionate to the salary of the employee, 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. The retired employees shall submit joint applications, along with their employer wherever the same has not been done. The directions above noted shall be complied within three months from the date of receipt of a certified copy of this judgment.

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.

The writ petition is allowed, leaving the parties to suffer their respective costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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