IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 34079 of 2014 (H)

PETITIONER :

K.SAROJINI,
W/O.RAGHAVAN, RESHIKESH, GANDHI NAGAR,
CHEROOR.P.O, THRISSUR.

BY ADV. SRI.M.S.RADHAKRISHNAN NAIR

RESPONDENTS :

1. KERALA STATE LAND DEVELOPMENT CORPORATION LTD., REPRESENTED BY ITS MANAGING DIRECTOR, KOWDIAR P.O., THIRUVANANTHAPURAM- 695 003.

2. EMPLOYEES PROVIDENT FUND ORGANISATION, REPRESENTED BY ITS REGIONAL PROVIDENT FUND COMMISSIONER, PATTOM, THIRUVANANTHAPURAM 695 004.

R1 BY ADV. SRI.A.ABDULKHARIM, SC, KERALA LAND DEVP.CORPN. LTD.
R2 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R2 BY ADV. SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 34079 of 2014 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 COPY OF THE APPLICATION DATED 14/3/2014.
EXHIBIT P2 COPY OF THE REPLY OF THE 2ND RESPONDENT DATED 27/3/2014.
EXHIBIT P3 COPY OF THE LETTER SENT BY PETITIONER TO THE FIRST RESPONDENT DATED 4/4/2014.
EXHIBIT P4 COPY OF THE LETTER SENT BY PETITIONER TO THE CENTRAL PROVIDENT FUND COMMISSIONER DATED 13/6/2014.
EXHIBIT P5 COPY OF THE COMMUNICATION ISSUED BY FIRST RESPONDENT TO THE SECOND RESPONDENT DATED 27/9/2014.
EXHIBIT P6 COPY OF THE REPLY DATED 29/10/2014.
EXHIBIT P7 COPY OF THE REPLY DATED 13/11/2014.
EXHIBIT P8 COPY OF THE STATEMENT OF ACCOUNT OF THE PETITIONER'S P.F.AMOUNT.
EXHIBIT P9 COPY OF THE APPLICATION DATED 26/11/2014.
EXHIBIT P10 COPY OF THE PROCEEDINGS DATED 3/1/2012.
EXHIBIT P11 COPY OF THE REPLY DATED 17/3/2012.

RESPONDENT(S)' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.34079 of 2014

Dated this the 21st day of October, 2015

JUDGMENT

The petitioner entered service of the Kerala State Land Development Corporation Ltd, the 1st respondent herein as Steno Typist Grade-II and retired as Senior Grade Steno Typist. Though the petitioner attained the age of 55 years on 31.10.2008, she was permitted to continue in service till the age of 60 years, on the strength of an interim order passed by this Court in W.P.(C)No.30832 of 2008. Based on the said interim order she continued in service till 31.10.2013 and the said Writ Petition is still pending consideration before this Court. During the five year service, after attaining the age of 55 years, the petitioner was paid only the basic pay and no contribution towards provident fund was deducted from her salary.

2. On attaining the age of 60 years, the petitioner submitted Ext.P1 representation dated 14.3.2014 before the 1st respondent claiming provident fund dues, by submitting an application in the prescribed form. She received Ext.P2 communication dated 18.3.2014 of the 2nd respondent informing that, her claim under EPF Scheme has been returned to the 1st respondent since the establishment has not submitted the Past Accumulation Statement. On receipt of Ext.P2, the petitioner

submitted Ext.P3 representation dated 4.4.2014 before the 1st respondent pointing out that the settlement of her P.F. claim is delayed due to the default on the part of the 1st respondent in not furnishing necessary details in support of her claim. Thereafter, the petitioner submitted Ex.P4 representation before the 2nd respondent pointing out that the settlement of her P.F. dues is delayed indefinitely.

3. On 27.9.2014, the 1st respondent along with Ext.P5 communication forwarded the necessary particulars of the 13 retired employees along with Bank particulars for settlement of their respective P.F.claims. On receipt of Ext.P5 the 2nd respondent requested the 1st respondent to forward the split up details/statement of the employees concerned in order to settle their claim. The particulars sought for were furnished along with Ext.P7 letter dated 13.11.2014 of the 1st respondent. As per Ext.P8 the statement of closing balance of the provident fund dues to the petitioner as on 31.3.2013 comes to Rs.6,70,716.44 and the same is also shown as closing balance as on 31.12.2013. Thereafter, the petitioner submitted Ext.P9 application before the 2nd respondent seeking disbursement of atleast the undisputed portion of the P.F. dues.

4. It is pertinent to note that, the 1st respondent issued Ext.P10 proceedings dated 3.1.2012 informing the provident fund subscribers who

have completed 58 years of age that they should apply for the P.F. claim failing which their account will be forfeited. On receipt of Ext.P10 the petitioner sent Ext.P11 reply stating that since her age of retirement is the subject matter of W.P.(C)No.30832 of 2008 pending before this Court, her terminal benefits can be settled only after disposal of that case. Thereafter, aggrieved by the delay on the part of the 1st respondent in settling the P.F. claim, the petitioner has filed this Writ Petition seeking a writ of mandamus commanding the 1st respondent to pay provident fund amount due to her with statutory interest immediately. The petitioner has also sought for a writ of mandamus commanding the respondents to pay penal interest @ 12% for the delayed payment, as provided under sub-para (7) of Para 72 of the EPF Scheme.

5. A counter affidavit has been filed by the 1st respondent contending that on the basis of the interim order granted by this Court in W.P.(C)No.30832 of 2008 the petitioner continued in service till the age of 60 by drawing basic wages. As per the above interim order the 1st respondent has to pay only basic wages to the retired employees who were continuing in service after the normal date of superannuation and it was not authorized to make any deductions from such basic wages. The petitioner submitted an application dated 14.3.2014 for releasing her

provident fund dues. However, the 1st respondent being declared as an unexempted organization under the provisions of the Provident Fund Act, with effect from 31.12.2013, the power to sanction/release provident fund claims vested with the EPF Organisation. On receipt of the cancellation of relaxation letter dated 23.12.2013 the 1st respondent has taken all measures to wind up the KLDC ECPF as early as possible. One of the special deposits pertaining to the corpus fund was redeemed and returned to the Trust by State Bank of India only on 7.7.2014 as it required certain compliance with the formalities with their Head Office in Mumbai. The 1st respondent would contend that, the work to finalise the accounts upto 31.12.2013 and preparation of the Past Accumulation Statement in the individual accounts as well as pro-rata distribution of income earned by the corpus fund from investments right from the inception of the KLDC ECPF Trust was a massive task. The work was entrusted to an auditing firm and they completed the work in a time bound manner and audited statements were submitted on 4.8.2014 to the EPF Organisation. On submission of Past Accumulation Statement on 26.9.2014, the 1st respondent submitted claim for release of P.F. of the 13 retired employees, including the petitioner, to the EPF Organisation on 27.9.2014. The 2nd respondent by letter dated 14.10.2014 directed the 1st respondent to submit separate statements for individual accounts in the prescribed format and the same was also submitted subsequently. Therefore, the 1st respondent would contend that there is absolutely no culpable delay or laches on their part in forwarding the requisite documents to the 2nd respondent so as to enable the said respondent to process the P.F. claim made by the petitioner.

6. A counter affidavit has been filed on behalf of the 2nd respondent which was followed by a statement filed by the learned Standing Counsel for the 2nd respondent dated 12.10.2015. A reading of the aforesaid counter affidavit as well as the statement would show that, the 1st respondent establishment transferred the Past Accumulation amount in instalments vide cheque dated 7.3.2014, 13.6.2014, 19.7.2014 and 9.1.2015. The Past Accumulation Statement was submitted on 26.9.2014, which could not be accepted due to certain defects. The establishment submitted revised returns on 30.12.2014. The petitioner joined the 1st respondent's establishment on 1.10.1991 and her date of exit was 31.10.2008. However, she applied for settlement of accounts to the 2nd respondent only in March, 2014. Accordingly her Provident Fund account became inoperative with effect from 31.10.2011, as provided under sub-para (6) of Para 72 of the EPF Scheme and interest shall not be

credited to her account from the date on which it has become inoperative, as provided under sub-para (6) of Para 60 of the said Scheme. After the receipt of Past Accumulation Statement, the claim made by the petitioner was received on 6.3.2015 and the same was settled and an amount of Rs.6,95,960/- was credited to her bank account on 12.3.2015 (wrongly typed as 12.6.2015 in para 6 of the counter affidavit). Therefore, the 2nd respondent would contend that the EPF Organisation has taken all steps to process the claim made by the petitioner, but there occurred delay in settlement of the claim, which was due to the delay in submission of Past Accumulation Statement and the delay in transferring the Past Accumulation funds by the 1st respondent, who was holding the funds till that day.

7. Later, the 2nd respondent has also filed a statement dated 12.10.2015 and para 2 of the statement reads thus:-

> "It is pleased to submit that the petitioner submitted applications for withdrawal of provident fund dues on various dates such as 17/03/2014, 30/09/2014, 07/11/2014, 28/11/2014 and on 30/01/2015. All the claim applications except the claim application received on 30/01/2015 were returned since the statement showing the EPF accumulations to be credited in the account of the petitioner member was not received along with the accumulations. On receipt of the

> statement the amount was credited to the petitioner member and EPF payment was made on her claim application dtd. 30/01/2015 and the amount was credited on 17/02/2015 as per the Bank statement produced before this Hon'ble Court."

8. During the course of arguments, it was pointed out that, since the petitioner had already received the provident fund amount, the question that remains for consideration in this Writ Petition is as to whether she is entitled for interest in terms of sub-para (6) of Para 60 or penal interest in terms of sub-para (2) of Para 72 of the EPF Scheme.

9. The pleadings and materials on record would show that, though the petitioner attained the age of 55 years on 31.10.2008, on the strength of an interim order granted by this Court in W.P.(C)No.30832 of 2008 she continued in service till 31.10.2013, the date on which she attained the age of 60. However, since she was continuing in service after 31.10.2008 on receiving basic pay, no provident fund contributions were recovered from her and remitted to the EPF. Thereafter, only on 4.4.2014 the petitioner submitted an application for settlement of P.F. dues along with Ext.P3. Even after submission of the aforesaid application the processing of the claim by the 2nd respondent was delayed due to the delay on the part of the 1st respondent in furnishing the necessary documents. As can be seen from the statement filed by the learned

Standing Counsel for the 2nd respondent, para 2 of which has already been extracted hereinbefore, the claim application received on 30.1.2015 was processed by the 2nd respondent and the provident fund amount was credited in the account of the petitioner only on 17.2.2015.

10. Para 60 of the EPF Scheme deals with payment of interest. As per sub-para (6) of Para 60, interest shall not be credited to the account of a member from the date on which it has become an Inoperative Account, under the provisions of sub-para (6) of Para 72 of the EPF Scheme. However, the proviso to sub-para (6) makes it clear that, if the settlement of claim in respect of Inoperative Account is delayed for more than thirty days from the date of receipt of the application for settlement of claim, interest shall be credited to the account in accordance with sub-para (2) for delay for period excluding the period of thirty days.

11. Similarly Para 72 deals with payment of provident fund and going by sub-para (7) of Para 72 the claims, complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the

Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

12. As far as the claim for penal interest under sub-para (7) of Para 72 of the EPF Scheme is concerned, it can be awarded only in case in which the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days. The pleadings on record are not sufficient to arrive at a conclusion that the failure of the Commissioner is without any sufficient cause. The reasons stated in the counter affidavit and in the statement filed by the 2nd respondent would indicate that, the 2nd respondent cannot be fastened with the liability to pay penal interest in terms of sub-para (7) of Para 72 of the EPF Scheme. However, as far as payment of interest under the proviso to sub-para (6) of Para 60 of the EPF Scheme is concerned, it can be seen that, though the account in question was an Inoperative Account, once the 2nd respondent received the claim on 30.1.2015, he should have settled the claim within a period of 30 days from the date of receipt of that application. In the case on hand admittedly the settlement was made only on 17.2.2015, the date on

which the amount was actually credited in the bank account of the petitioner. In such circumstances, the petitioner will be entitled for payment of interest @ 12% for the provident fund dues amounting to ₹6,95,960/- for the period excluding the period of 30 days from 30.1.2015, the date of receipt of application, till 17.2.2015, the date on which the provident fund dues were credited in her account.

In the result, this Writ Petition is disposed of directing the 2nd respondent to pay interest to the petitioner at the rate of 12% per annum for the provident fund dues, in terms of sub-para (6) of Para 60 of the EPF Scheme for the aforesaid period, which shall be paid to her within a period of three months from the date of receipt of a certified copy of this judgment.

Sd/-

ANIL K.NARENDRAN, JUDGE

skj

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P.A to Judge