

Assistant Manager vs Assistant Provident Fund Commissioner(Cr)

Assistant Manager vs Assistant Provident Fund Commissioner(Cr)

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Court : Kerala

Decided On : Apr-01-2024

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/30502/2015

Appellant : Assistant Manager

Respondent : Assistant Provident Fund Commissioner(Cr)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN MONDAY, THE 1ST DAY OF APRIL 2024 / 12TH CHAITHRA, 1946 WP(C) NO. 9301 OF 2015 PETITIONERS: 1 MANAGER, KERALA STATE CIVIL SUPPLIES CORPORATION KANHANGAD DEPOT, KASARGOD DISTRICT. 2 KERALA STATE CIVIL SUPPLIES CORPORATION REPRESENTED BY ITS MANAGING DIRECTOR, MAVELI BHAVAN, GANDHI NAGR, COCHIN - 682 020. BY ADV SMT.MOLLY JACOB - SC RESPONDENTS:

1 ASSISTANT PROVIDENT FUND COMMISSIONER (C&R) SUB REGIONAL OFFICE, P.B.NO.117, V.K.COMPLEX, 4TH ROAD,

KANNUR - 670 001. 2 CHAIRMAN, KERALA HEADLOAD WORKERS WELFARE BOARD SUB OFFICE, PRIYADARSINI BUILDING KOTTACHERY, KANHANGAD - 671 316, KASSARGOD DISTRICT. 3 MANAGER, FEDERAL BANK KANHANGAD - 671 316. 4 KERALA HEADLOAD WORKERS WELFARE BOARD REPRESENTED BY ITS CHIEF EXECUTIVE SRM ROAD, COCHIN - 682 018. 5 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.

SRI. K.C.SANTHOSH KUMAR - SC, EPFO SRI. C.A.MAJEED, SC, KHWWB SRI. K.J.CHACKOCHAN SRI. GEORGE VARGHESE MANACHIRACKEL SMT. SALI. P. MATHEW MUNNAR SRI. THOMAS ABRAHAM, SC, KHWWB SRI. SYAMANTHAK - GP DR. ABRAHAM P. MEACHINKARA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.04.2024, ALONG WITH WP(C).24375/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN MONDAY, THE 1ST DAY OF APRIL 2024 / 12TH CHAITHRA, 1946 WP(C) NO. 24375 OF 2015 PETITIONERS: 1 DEPOT MANAGER, KERALA STATE CIVIL SUPPLIES CORPORATION, TALUK DEPOT, CHERTHALA, ALAPPUZHA DISTRICT. 2 KERALA STATE CIVIL SUPPLIES CORPORATION REPRESENTED BY ITS MANAGING DIRECTOR, MAVELI BHAVAN, GANDHI NAGAR, COCHIN - 682 020. BY ADV SMT.MOLLY JACOB - SC RESPONDENTS:

1 ASSISTANT PROVIDENT FUND COMMISSIONER SUB REGIONAL OFFICE BHAVISHYA NIDHI BHAVAN, KALLOOR, KOCHI - 682 017. 2 CHAIRMAN KERALA HEAD LOAD WORKERS WELFARE BOARD, MUNICIPAL GANDHI BAZAR SHOPPING COMPLEX, T.D ROAD, CHERTHALA - 683 524. 3 KERALA HEADLOAD WORKERS WELFARE

ROAD REPRESENTED BY ITS CHIEF EXECUTIVE, SRM ROAD, COCHIN - 682 018. 4 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA, LABOUR & REHABILITATION DEPT., SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.

BY ADVS. SRI. N.N.SUGUNAPALAN (SR.) SRI. S.KRISHNA MOORTHY(ERNAKULAM) SRI. V.E.ABDUL GAFOOR SMT. T.N.GIRIJA - SC, EPFO SRI. SYAMANTHAK - GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.04.2024, ALONG WITH WP(C).9301/2015, DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN MONDAY, THE 1ST DAY OF APRIL 2024 / 12TH CHAITHRA, 1946 WP(C) NO. 26067 OF 2015 PETITIONERS: 1 SHIBU R. AGED 36 YEARS MELATHETHUNDIYIL, LAKASSERY, CHENGANNOOR. 2 VIJAYAKUMAR M.K VAZHE VADAKKETHIL, KEEZHCHERIMEL, CHENGANNOOR. 3 E.K.RAVEENDRAN PILLA MANTHURUTHIL HOUSE, MUNDANKAVU, CHENGANNOOR. 4 SUNILKUMAR R. KALLUMADATHU PALLATHU KODIYATTUKARA, CHENGANNOOR. 5 AJAYAN K.N KOOTTAPPARAYIL KEEZHCHERIMEL, CHENGANNOOR. 6 SUREJ C.R CHANNATHUMKALAYIL KEEZHCHERIMEL, CHENGANNOOR. BY ADVS. SRI.C.M.EBRAHIM SRI.PRAMOD KOCHUTHOMMEN.E. RESPONDENTS: 1 DEPOT MANAGER, SUPPLYCO TALUK DEPOT CHENGANNOOR - 689 121. 2 ASSISTANT PROVIDENT FUND COMMISSIONER (C) SUB REGIONAL OFFICE, BHAVISHYA NIDHI BHAVAN, KALOOR, KOCHI - 682 017.

3 ALAPPUZHA DISTRICT COMMITTEE KERALA HEADLOAD WORKERS WELFARE BOARD, REPRESENTED BY ITS CHAIRMAN, MUNICIPAL SHOPPING COMPLEX, THATHAMPALLY P.O.,

ALAPPUZHA - 688 013. 4 KERALA HEADLOAD WORKERS WELFARE BOARD REPRESENTED BY ITS CHIEF EXECUTIVE SRM ROAD, COCHIN - 682 018. 5 KERALA STATE CIVIL SUPPLIES CORPORATION REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR, MAVELI BHAVAN, GANDHI NAGAR, KOCHI - 682 020. 6 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA LABOUR AND REHABILITATION DEPT., SECRETARIAT, THIRUVANANTHAPURAM PIN - 695 001.

BY ADVS. DR.S.GOPAKUMARAN NAIR (SR.) SRI. KOSHY GEORGE, SC, KHLWWB SRI. C.S. AJITH PRAKASH, SC, KHWWB SRI. S.PRASANTH - SC, EPFO SRI. SYAMANTHAK - GP R5 - SMT. MOLLY JACOB - SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.04.2024, ALONG WITH WP(C).24375/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN MONDAY, THE 1ST DAY OF APRIL 2024 / 12TH CHAITHRA, 1946 WP(C) NO. 30502 OF 2015 PETITIONERS: 1 ASSISTANT MANAGER KERALA STATE CIVIL SUPPLIES CORPORATION, TALUK DEPOT, POOKADA JUNCTION, MAVELIKKARA. 2 KERALA STATE CIVIL SUPPLIES CORPORATION REPRESENTED BY ITS MANAGING DIRECTOR, MAVELI BHAVAN, GANDHI NAGAR, COCHIN - 682 020. BY ADV SMT.MOLLY JACOB - SC, SUPPLYCO RESPONDENTS:

1 ASSISTANT PROVIDENT FUND COMMISSIONER (C) SUB REGIONAL OFFICE, BHAVISHYA NIDHI BHAVAN, KALOOR, KOCHI - 682 017. 2 CHAIRMAN KEALA HEAD LOAD WORKERS WELFARE BOARD, SUB OFFICE, KAYAMKULAM, MUNICIPAL SHOPPING COMPLEX, THATHAMPALLY P.O., ALAPPUZHA - 688 013. 3 KEALA

HEAD LOAD WORKERS WELFARE BOARD REPRESENTED BY ITS CHIEF EXECUTIVE, SRM ROAD, COCHIN - 682 018. 4 STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT OF KERALA, LABOUR AND REHABILITATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 5 UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF LABOUR & EMPLOYMENT, NEW DELHI.

BY ADVS. DR.S.GOPAKUMARAN NAIR (SR.) SRI. C.A.MAJEED SMT. VANDANA P. CGC SRI. KOSHY GEORGE, SC, KHLWWB SRI. S.PRASANTH - SC,EPFO SRI. DHEERAJ - GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.04.2024, ALONG WITH WP(C).24375/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

All these writ petitions except W.P.(C) No.26067 of 2015 are filed by the Kerala State Civil Supplies

Corporation (for short, KSCSC) challenging the order

of the Assistant Provident Fund Commissioner, Kochi passed under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the EPF Act) and the order rejecting the review petition filed under Section 7B of the EPF Act, and directing the petitioners to remit contributions towards the Provident Fund of the Head Load Workers engaged by them in their depot. W.P.(C) No.26067 of 2015 is filed by the Head load Workers working in the depot of the Kerala State Civil Supplies Corporation against direction to remit the contribution towards Employees Provident Fund. The orders under Sections 7A and 7B of the EPF Act are challenged on the ground that the Employees Provident Fund Organisation has no jurisdiction to direct the Corporation to remit the amount towards Provident Fund contribution of Head load Workers. According to the petitioners, the Headload Workers are covered under the Welfare Scheme framed under the Kerala Headload Workers Act, 1978 and therefore, being a special

legislation exclusively for the welfare of the Head load Workers, the EPF Act cannot be applied in their case. It is contended that the Kerala Headload Workers Act prevails over the provisions of the EPF Act.

2. The learned counsel for the petitioners

refers to the judgment of this Court in Regional Provident Fund Finance Commissioner, Kochi v. Kerala Small Industries Development Corpn., Tvm and Others, [2016 (4) KHC 412 : 2016 (3) KLT 893], wherein this Court has held that the provisions under the EPF Act and Scheme framed thereunder are not applicable in the case of the Head load Workers

engaged by SIDCO. Paragraph 27 of the judgment

reads as follows:-

27. In the instant case, both the EPE Act, 1952 and the Kerala Headload workers Act, 1978 have been enacted by the Central and State Legislatures respectively, acting under the legislative powers available to it under Entries 23 and 24 of the Concurrent List in the Seventh Schedule of the Constitution. The Kerala Headload Workers Act received the Presidential assent on 28/09/1980. It is not in dispute before us that, the Kerala Headload Workers Act and the Scheme framed thereunder provide for welfare measures to headload workers, including provident fund, and that the headload workers registered under Clause 6A of the Said Scheme have a right to avail such benefits. It is also not in dispute before us that, the provisions of the EPF Act are inconsistent with the provisions of the Kerala Headload Workers Act and the Scheme framed thereunder. In such circumstances, conclusion is irresistible that, in view of the mandate of Clause (2) of Article 254 of the Constitution, the provisions of the Kerala Headload Workers Act, which is a later special enactment, which received Presidential assent on 28/09/1980 shall prevail in the State of Kerala, till the Parliament legislates under the proviso to Clause (2) of Article 254 of the Constitution. In that view of the

matter, we find no infirmity in the reasoning and conclusion of the learned Single Judge in the impugned

judgment that, in the teeth of Clause (2) of

Article 254 of the Constitution and the provisions of the Kerala Headload Workers Act and the Scheme framed thereunder, it may not be legal to call upon SIDCO to conform to the mandate of the EPF Act.

3. In the light of the dictum laid down by this

Court in the above decision, it will not be legal to call upon KSCSC to conform to the mandate of EPF Act. It is declared that the petitioners are not liable to pay contribution under the provisions of the EPF Act. Accordingly, all impugned orders and consequential orders, if any, are set aside. These writ petitions are disposed of with the above direction. Sd/- MURALI PURUSHOTHAMAN JUDGE SPR
APPENDIX OF WP(C) 9301/2015 PETITIONERS EXHIBITS:-

EXHIBIT P1 TRUE COPY OF THE LETTER DTD.18.2.2015 FROM THE CHAIRMAN,KERALA HEADLOAD WORKERS WELFARE BOARD TO THE DEPOT, KSCSC, KANHANGAD. EXHIBIT P2 TRUE COPY OF THE LETTER DTD.15.1.2015 ISSUED BY THE CHAIRMAN,KERALA HEADLOAD WORKERS WELFARE BOARD TO THE 'W' POOL LEADER. EXHIBIT P3 TRUE COPY OF THE CERTIFICATE ISSUED BY THE 2ND RESPONDENT. EXHIBIT P4 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 15 WORKERS BEFORE THE IST RESPONDENT. EXHIBIT P5 TRUE COPY OF THE ORDER DTD.6.2.2015 ISSUED BY THE IST RESPONDENT. EXHIBIT P5 (a) TRUE COPY OF THE LETTER DTD.10.03.2015 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P6 TRUE COPY OF THE ORDER DTD.4.3.2015 ISSUED BY THE IST RESPONDENT.

RESPONDENTS EXHIBITS: NIL. APPENDIX OF WP(C) 24375/2015
PETITIONERS EXHIBITS:-

EXHIBIT P1 TRUE COPY OF THE LETTER DTD.17.12.2014 ADDRESSED TO THE 1ST PETITIONER. EXHIBIT P2 TRUE COPY OF THE ORDER DATED 18.12.2014 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P3 TRUE COPY OF THE APPLICATION U/S 7B OF THE EMPLOYEES PROVISIONS ACT FILED BEFORE THE 1ST RESPONDENT. EXHIBIT P4 TRUE COPY OF THE STATEMENT FILED BEFORE THE 1ST RESPONDENT AT THE TIME OF PERSONAL HEARING. EXHIBIT P5 TRUE COPY OF THE ORDER DTD.12.06.2015 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS: NIL. APPENDIX OF WP(C) 26067/2015
PETITIONERS EXHIBITS:-

EXHIBIT P1 TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 13.01.2015. EXHIBIT P2 TRUE COPY OF THE REPRESENTATION DATED 10.02.2015 OF THE PETITIONERS BEFORE THE 1ST RESPONDENT. EXHIBIT P3 TRUE COPY OF THE LETTER DTD 27.05.2015 OF THE CHAIRMAN, HEADLOAD WORKERS WELFARE BOARD, ALAPPUZHA TO THE ASST.MANAGER, TALUK DEPOT, CHENGANNOOR. EXHIBIT P4 RECEIPT DTD. 30.06.2015. EXHIBIT P5 TRUE COPY OF THE PROHIBITORY ORDER OF THE RECOVERY OFFICER & ASST. P.F COMMISSIONER OF EMPLOYEES PROVIDENT FUND ORGANISATION DTD. 16.09.2015. EXHIBIT P6 TRUE COPY OF THE NOTICE DTD. 22.09.2015 ISSUED BY THE DEPOT MANAGER CHENGANNOOR.

RESPONDENTS EXHIBITS: NIL. APPENDIX OF WP(C) 30502/2015
PETITIONERS EXHIBITS:-

EXHIBIT P1 TRUE COPY OF THE ORDER DATED 16/7/2015 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P2 TRUE COPY OF THE LETTER DATED 2/6/2015 OF THE 2ND RESPONDENT ADDRESSED

TO THE 1ST PETITIONER. EXHIBIT P3 TRUE COPY OF THE STATEMENT OF SUPPLYCO TALUK DEPOT MAVELIKKARA SHOWING THE HANDLING CHARGE FROM 26/7/2015 TO EXHIBIT P4 TRUE COPY OF THE RECEIPT ISSUED FROM THE INDIAN BANK REGARDING THE REMITTANCE OF THE AMOUNT AS PER EXT.P3.

RESPONDENTS EXHIBITS: NIL.

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