K.V.Anil Kumar Vs. Union of India

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SooperKanoon Citation : sooperkanoon.com/37304

Court : Kerala

Decided On : Feb-03-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : K.V.Anil Kumar

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE3D DAY OF FEBRUARY201514TH MAGHA, 1936` WP(C).No. 29539 of 2014 (N) ------------------------------------ PETITIONERS:

1. K.V.ANIL KUMAR AGED58YEARS 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.AYYAPPANNAIR, 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. ASSISTANTPROVIDENT FUND COMMISSIONER (PENSION) SUB REGIONAL OFFICE, EMPLOYEES' PROVIDENT FUND ORGANISATION (EPFO) BHAVISHYANIDHI BHAVAN, KALOOR, ERNAKULAM-682 017.

4. ASSISTANTPROVIDENT 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.BIJUMEENATOOR R2 - 4 BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0302-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 29539 of 2014 (N) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: TRUE COPY OF THE PROCEEDINGS DATED122.2014 OF THE5H RESPONDENT ALONG WITH THE PENSION PAYMENT

ORDER

OF THE FIRST PETITIONER. EXT.P2: TRUE COPY OF THE PROCEEDINGS DATED135.2014 OF THE5H RESPONDENT ALONG WITH THE PENSION PAYMENT

ORDER

OF THE SECOND PETITIONER. EXT.P3: TRUE COPY OF THE PROCEEDINGS DATED310.2013 OF THE5H RESPONDENT ALONG WITH THE PENSION PAYMENT

ORDER

OF THE THIRD PETITIONER. EXT.P4: TRUE COPY OF THE PROCEEDINGS DATED163.2013 OF THE5H 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 DATED202.2007 ISSUED BY THE SECOND RESPONDENT. EXT.P7: TRUE COPY OF THE

JUDGMENT

DATED411.2011 IN W.P.(C)NO.6643 OF 2007 AND CONNECTED CASES. EXT.P8: TRUE COPY OF THE

JUDGMENT

DATED53.2013 IN W.A.NO.1137 OF2012 EXT.P9: TRUE COPY OF THE

JUDGMENT

DATED43.2014 IN W.P.(C)NO.2059 OF2014 EXT.P10: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE FIRST PETITIONER BEFORE THE FOURTH RESPONDENT DATED2910.2014. EXT.P11: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE SECOND PETITIONER BEFORE THE THIRD RESPONDENT DATED2710.2014. EXT.P12: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE THIRD PETITIONER BEFORE THE

THIRD RESPONDENT DATED2810.2014. EXT.P13: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE FOURTH PETITIONER BEFORE THE THIRD RESPONDENT DATED2810.2014. EXT.P14: TRUE COPY OF THE POSTAL RECEIPTS INDICATING ISSUANCE OF EXTS.P11 AND P12. EXT.P15: TRUE COPY OF THE

ORDER
DATED3110.2013 OF THE ASSISTANT PROVIDENT FUND COMMISSIONER. EXT.P16: TRUE COPY OF THE

JUDGMENT
DATED56.2014 IN W.P.(C)NO.8298 OF2014 // TRUE COPY // P.A.TO JUDGE K.VINOD CHANDRAN, J.

- W.P.(C)No.29539 OF2014- Dated this the 3rdday 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 1strespondent 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. W.P.(C)No.29539 OF2014:

2. :

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 W.P.(C)No.29539 OF2014:

3. : 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 W.P.(C)No.29539 OF2014:

4. : 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 jes