

R.Shaju Vs. Union of India

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Court : Kerala

Decided On : Mar-03-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : R.Shaju

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE 3D DAY OF MARCH 2015 12TH PHALGUNA, 1936 WP(C).No. 6590 of 2015 (W)

----- PETITIONER(S): ----- 1. R.SHAJU, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), TRISSUR REGIONAL OFFICE , KARTHIKA, MARAR ROAD, TRISSUR - 1.

2. K.UNNIKRISHNA VARMA, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), TRISSUR REGIONAL OFFICE, KARTHIKA, MARAR ROAD, TRISSUR - 1.

3. V.R.RAJITHA, DEPUTY MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), TRISSUR REGIONAL OFFICE, KARTHIKA, MARAR ROAD, TRISSUR - 1.

4. SEEMA NAMBIAR, ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), TRISSUR REGIONAL OFFICE, KARTHIKA, MARAR ROAD, TRISSUR - 1.

5. V.SURESH KUMAR, ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), TRISSUR REGIONAL OFFICE, KARTHIKA, MARAR ROAD, TRISSUR - 1.

6. LAVOSE V.V., ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK) REGIONAL OFFICE, IDUKKI.

7. VIJAYAN B.NAIR, REGIONAL MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), ERNAKULAM REGIONAL OFFICE, ERNAKULAM. --2-- --2-- WP(C).No. 6590 of 2015 (W) ----- 8. B.ANOOP, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), THIRUVANANTHAPURAM HEAD OFFICE, THIRUVANANTHAPURAM.

9. SUMADEVI T.V., ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), ERNAKULAM REGIONAL OFFICE, ERNAKULAM.

10. PAUL CHACKO, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KANNUR.

11. O.REMESAN, ATTENDER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, IDUKKI.

12. JOSE PRATAP K.VICTOR, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KANNUR.

13. KRISHNANKUTTY P.A., DEPUTY MANAGER/REGIONAL MANAGER IN CHARGE KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KALPETTA, WAYANAD DISTRICT.

14. RAJEEV C.G., ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KALPETTA, WAYANAD DISTRICT.

15. JOHNSON T.J., ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KALPETTA, WAYANAD DISTRICT.

16. SUBHASH M.M., ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK) WAYANAD REGIONAL OFFICE, ARUN TOURIST HOME BUILDING, KALPETTA, WAYANAD DISTRICT.

17. PRAKASH M, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), KOZHIKODU REGIONAL OFFICE "KAMAL", KOZHIKODE - 673 001. --3-- --3-- WP(C).No. 6590 of 2015 (W) ----- 18. ANIL KUMAR M.P,DEPUTY MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KOZHIKODE.

19. LATHA C.K, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KOZHIKODE - 673 001.

20. N.RAJENDRA KURUP, ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), HEAD OFFICE, THIRUVANANTHAPURAM.

21. S.S.MOHANAKUMAR, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD

BANK), REGIONAL OFFICE, PALAKKAD.

22. M.JAYALEKSHMI, ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, PALAKKAD.

23. PREETHI K.P, ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, MARAR LANE, THRISSUR.

24. A.K.GEETHAMMA, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, MARAR LANE, THRISSUR.

25. C.RAMADAS, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, P.B.NO.32, KANHANGAD - 671 315.

26. K.V.BALAN, ATTENDER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, THRISSUR - 1.

27. RENJITH A.M., GUEST ROOM KEEPER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, THRISSUR. --4-- --4-- WP(C).No. 6590 of 2015 (W)

----- 28. THOMSON JOSEPH, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, ERNAKULAM.

29. T.P.MEHAMOBB, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, ERNAKULAM.

30. S.REMESAN, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, PATHANAMTHITTA.

31. V.SASIDHARAN, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK(KSCARD BANK), REGIONAL OFFICE, KOLLAM.

32. GEETHA RANI.J, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KOLLAM.

33. K.RAMESH KUMAR, ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KOLLAM.

34. S.L.BEENA, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KOLLAM.

35. C.CHANDRIKA, DEPUTY MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK(KSCARD BANK), REGIONAL OFFICE, KOLLAM.

36. R.VIJAYAN, REGIONAL MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KOLLAM.

37. RAJARAM M, ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), INSPECTION WING (N2), KANNUR.

38. ELDO P.M., DEPUTY MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KASARAGOD. --5-- --5-- WP(C).No. 6590 of 2015 (W)

----- 39. GEORGE E.A., ASSISTANT MANAGER, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, KASARAGOD.

40. ANNIE SEBASTIAN, ASSISTANT, KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK (KSCARD BANK), REGIONAL OFFICE, ERNAKULAM. BY ADVS.SRI.P.N.MOHANAN SRI.C.P.SABARI RESPONDENT(S): ----- 1. UNION OF INDIA (UOI), REPRESENTED BY THE SECRETARY TO GOVT.OF INDIA, MINISTRY OF LABOUR & DEPARTMENT OF EMPLOYMENT, NEW DELHI - 110 001.

2. REGIONAL PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO), BHAVISHANIDHI BHAVAN, PATTOM PALACE, THIRUVANANTHAPURAM, PIN - 695 004.

3. KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK, REPRESENTED BY GENERAL MANAGER IN CHARGE, THIRUVANANTHAPURAM, PIN - 695 001.

4. KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK PROVIDENT FUND TRUST, REPRESENTED BY MANAGING TRUSTEE, THIRUVANANTHAPURAM, PIN - 695 001.

5. MANAGING COMMITTEE OF KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK, REPRESENTED BY ITS PRESIDENT, THIRUVANANTHAPURAM, PIN - 695 001. R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL R2 BY SRI.N.N.SUGUNAPALAN(SENIOR ADVOCATE) BY SMT.T.N.GIRIJA, SC R3 TO R5 BY SRI.GEORGE POONTHOTTAM, SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/03/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: mbr/ WP(C).No. 6590 of 2015 (W)

----- APPENDIX PETITIONER(S)' EXHIBITS:

----- EXT.P-1: A TRUE COPY OF THE JUDGEMENT DATED 11.11.2011 IN WPC NO.6643/2007. EXT.P-2: A TRUE COPY OF THE JUDGEMENT DATED 13.05.2013 IN W.A.NO.1137/2012. EXT.P-3: A TRUE COPY OF THE JUDGEMENT IN WPC NO.2059/2014. EXT.P-4: A TRUE COPY OF THE JUDGEMENT IN WPC NO.8298/2014. RESPONDENT(S)' EXHIBITS: - NIL

----- /TRUE COPY/ P.A. TO JUDGE mbr/ K.VINOD CHANDRAN, J - - - - - W.P.(C).No. 6590 of 2015 - - - - -

----- Dated 3rd March, 2015 -----

JUDGMENT

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

2. The petitioners are the employees of the 3rd respondent. Admittedly, the petitioners are 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 WP(C).6590/15 2 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 retention was made by the Organization without WP(C).6590/15 3 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. WP(C).6590/15 4 5. Following the binding precedents, it is directed 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. The extant employees shall also 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 WP(C).6590/15 5 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. Writ petition allowed. Sd/- K.VINOD CHANDRAN Judge Mrcs //True Copy//

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