(2015) 06 KL CK 0226

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3507 of 2014 (K)

Chevayur Service Co-Operative Bank Ltd. APPELLANT

Vs

Employees'' Provident Fund Organisation and Others RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 61, 61(1)

Citation : (2015) 146 FLR 1073 : (2015) LLR 1213

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : P.P. Jacob, for the Appellant; Thomas Mathew Nellimoottil, S.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

P.V. Asha, J—The petitioner-Co-operative Society is aggrieved by the action of the 1st respondent which demanded Provident Fund dues under the Central Scheme in respect of the Employees of the Society. The stand of the Co-operative Society is that it is governed by the Kerala Co-operative Employees Self Financing Pension Scheme, 1994 and all its employees have been enrolled as members of the same. Since they are getting benefits out of the said scheme out of the contributions made to it by the society, it is not necessary to remit contributions under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the PF Act).

The petitioner had earlier approached this Court in W.P. (C). No. 31682/2006 and this Court by Ext. P3 judgment held that it is open to the employees of a Co-operative Society to opt either the Central Scheme under the Employees Provident Fund Act or the scheme under the State Act. In the present case the petitioner and its employees have already opted a scheme approved by the State Government. The said writ petition was accordingly disposed of in the light of the Division Bench decision of this Court in Kerala State Co-operative Employees Pension Board Vs. C.D. Udayakumar and Others, (2012) 3 KLJ 680 .

Despite this the 1st respondent issued Ext. P4 proceedings demanding a sum of Rs. 14,60,544/- towards the contribution for the period from 11/2003 to 7/2006. It was stated therein that exemption granted to the establishment is limited to the provisions of the Employees Pension Fund, 1994 alone and therefore the employer society has to comply with the provisions of all the schemes other than Employees Pension Scheme, framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. This was followed by another proceedings in Ext. P5 issued on 21.1.2014 proposing action under the provisions of Clause (x) (3) of section 8-F of the PF Act against the Kozhikode District Co-operative Bank directing them to remit a sum of Rs. 14,60,544/-. There upon by Ext. P6 letter the Kozhikode District Co-operative Bank informed the petitioner society about the direction issued by the Employees Provident Fund Commissioner. This writ petition was filed in the above circumstances.

2. The 1st respondent has filed a counter-affidavit stating that the issue decided by this Court was only in respect of the Pension Scheme and regarding the other contributions the petitioner-society was bound to remit the contribution to the 1st respondent.

3. I heard the learned Counsel appearing for the petitioner and respondents. From the judgment in Kerala State Co-operative Employees Pension Board Vs. C.D. Udayakumar and Others, (2012) 3 KLJ 680 , it is seen that this Court had considered all the aspects of the case and held that under the proviso to section 61(1) of the Kerala Co-operative Societies Act, after establishment of Self Financing Pension Scheme under the Kerala State Co-operative Employees Pension Board, the provisions of Employees Provident Fund Act do not apply to the establishment, which is required to establish a Provident Fund by itself. So that the pension fund will be operated by the Pension Board and Provident Fund will be managed by the Trust Fund established by the Co-operative Bank. It is seen that the petitioner society has already established a Provident Fund Trust, established by the District Co-operative Bank, Kozhikode. The contributions of the employees are therefore remitted in the account of the Kerala Co-operative Employees Self Financing Scheme maintained in the District Bank. Therefore the demand made by the 1st respondent cannot stand. As the society itself has opted to have an independent Provident Fund Scheme, which is held permissible in terms of section 61 of the Kerala Co-operative Societies Act read with Rule 58 of the Co-operative Societies Rules, the 1st respondent cannot insist payment under the Central Scheme. Accordingly, the orders issued by the 1st respondent in Exts. P4, P5 and P6 are quashed.

Accordingly, the writ petition is allowed.

