(2006) 03 KL CK 0055

In the High Court Of Kerala

Case No : O.P. No. 12193 of 2001

P.M. James APPELLANT

Vs

The Accountant General, Kerala and Others RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Citation : (2006) 1 KLJ 921 : (2006) 2 KLT 870

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : K.A. Abraham, S.S. Nair and Biju Martin, for the Appellant; P.K. Shakeela (GP), for the Respondent

Judgement

Kurian Joseph, J.—What is the subscription in terms of the General Provident Fund (Kerala) Rules and what is the subscription which attracts interest are the simple question to be decided in this case. The subscriber to the General Provident Fund is entitled to make subscription in terms of Rule 11. Rule 11 reads as follows:- 11(1) The amount of subscription shall be fixed by the subscriber himself, subject to the following conditions.

(a) It shall be expressed in whole rupees.

(b) It may be any sum, so expressed, not less than 6 percent of his emoluments and not more than his emoluments.

The minimum mandatory subscription is not less than 6% of the emoluments and the maximum is the total emoluments. The term "emoluments" is defined in Rule 2(b) which reads as follows:-

Except where otherwise expressly provided "emoluments" means pay, leave salary or subsistence allowance as defined in the Kerala Service Rules or other Service Rules applicable to the officer concerned and includes dearness pay appropriate to pay, leave salary or subsistence allowance if admissible and any remuneration of the nature of pay received in respect of foreign service.

2. Since emoluments for the purpose of subscription to General Provident Fund includes dearness pay also, the minimum or maximum amount of subscription has to be quantified based on the emoluments which includes dearness pay. The basis of such computation is not the basic pay but the pay including the dearness allowance. The stand taken in the impugned Ext. P9 order as well as the counter affidavit is that the subscription in excess of basic pay towards contribution is not contemplated and if any such contribution is made the same shall not be treated as subscription so as to enure interest. Learned Government Pleader inviting reference to the counter affidavit submits that emoluments should take only pay, leave salary and allowance as contended by the petitioner. I am afraid the contention cannot be appreciated. In view of the definition of emoluments as appearing at Rule 2(b) the same shall include dearness pay as well. A subscriber to the General Provident Fund is hence entitled to make contribution not exceeding the total emoluments which includes dearness pay, for the purpose of statutory interest. However, if the subscription exceeds such emoluments including pay and dearness allowance, the excess shall not attract interest. I quash Ext. P9. There will be a direction to the first respondent to consider the matter afresh and in case the petitioner has limited the subscription to an amount not exceeding the emoluments as per the position as clarified in the judgment, he shall be paid the statutory interest. The needful shall be done within a period of two months from the date of production of a copy of this judgment by the petitioner.

The original petition is disposed of as above.

