(2014) 10 KL CK 0210

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 25878 of 2014 (H)

Silvester V.J. APPELLANT

Vs

The Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0210

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P.N. Mohanan, Advocate for the Appellant; T.N. Girija, S.C., Latha Krishnan and R. Ranjith, Govt. Pleader, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—I have heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the 1st respondent, the learned Standing Counsel appearing for the 2nd respondent and the learned Government Pleader appearing for the 3rd respondent.

2. The petitioners in the Writ Petition are the retired employees of the 2nd 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.

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, i.e., 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 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 withdrawal of the Provident Fund amounts, have to be refunded to the Provident Fund Organization. The extant employees and those retired 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.

The writ petition is allowed. No costs.

