

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.18631 of 2010
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Dated this the 23rd day of June, 2017

J U D G M E N T

The petitioner is a co-operative bank registered under the Kerala Co-operative Societies Act. The bank is also covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, (hereinafter referred to as 'the EPF Act'). In accordance with the provisions of the second proviso to Section 6 of the Act, the petitioner bank has been making a contribution of 12% of the basic wages, dearness allowance and retaining allowance payable to its employees (hereinafter referred to as "the relevant amount") along with the equal contribution of the employees to the said fund. By virtue of the provisions of Section 6A of the EPF Act, from out of the employees contribution under Section 6 an amount not exceeding eight and one-third per cent of the relevant amount has to be paid into the pension fund constituted under the Pension Scheme under the said Act. It would appear that the petitioner bank obtained an exemption in terms of

Section 17 (1) (C) which reads as follows:

"17. Power to exempt.-

(1) xxxx

(1A) xxxx

(1B) xxxx

(1C) The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or propose to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act.

(2) Any Scheme may make provision for exemption of any person or class of persons employed in any establishment to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits separately or jointly, are on the whole not less favourable than the benefits provided under this /act or the scheme:

Provided that no such exemption shall be granted in respect of a class of persons unless

the appropriate Government is of opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits."

Pursuant to the said exemption granted in favour of the petitioner by the State Government, the petitioner became entitled to an exemption from the requirement of paying the aforesaid amount of 8.33% of the relevant amount into the pension fund under the Pension Scheme. The exemption under Section 17 was granted to the petitioner by Ext.P1 Notification, which took note of the fact that the petitioner was providing pensionary benefits under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, on conditions that were at par, or more favourable, than the Pension Scheme under the EPF Act. The contribution of the petitioner under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, happens to be at the rate of 10% of the relevant amount, as provided for in the said Scheme. When making the necessary employers contribution under the EPF Act, therefore, the petitioner paid the differential between 10% of the relevant amount, which he was paying into the fund under the Kerala Co-operative Societies Employees Self Financing Pension

Scheme and 12% of the relevant amount, that he was obliged to pay in terms of the EPF Act, along with the 12% contribution of the employees as envisaged under the EPF Act. In other words, the petitioner was effectively paying 14% of the relevant amount to the respondents. By Ext.P2 assessment order for the period from June 2009 to October 2009, the differential contribution of the petitioner to the fund under the EPF Act was assessed at Rs.1,07,490/-. The said figure was arrived at by computing the differential contribution as the difference between the rate at which the contribution had to be made by the employer (12%) of the relevant amount and 8.33% of the relevant amount, in respect of which amount the petitioner had obtained an exemption under Ext.P1 Notification. In the writ petition, Ext.P2 assessment order is impugned, on the contention that, inasmuch as the petitioner had already paid 10% of the relevant amount, as his contribution to the pension fund created under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, his liability in respect of a differential contribution was only to the extent of 2% and not 3.667% as contended by the respondents.

2. A counter affidavit has been filed on behalf of the 1st respondent, wherein paragraph 6, it is stated as follows:

"It is submitted that the contention of the petitioner that they are not liable to pay 15.67% of wages to the Provident Fund Scheme, as stated, is highly exaggerated and at no point of time petitioner is required to pay 15.67%. The petitioner is liable to pay 10% towards Co-operative Employees Self Financing Pension Scheme and 3.67% to Individual Employees Provident Fund. As per Section 6 of the EPF & MP Act 1952 as well as EPF Scheme 1952, employer as well as employee of an establishment to which this Act & Scheme applies should contribute towards the Fund at 12% of the wages. As per para 5 of Employees Pension Scheme 1995, from and out of the contributions payable by the Employer in each month under Section 6 of the Act, a part of contribution representing 8.33% of Employees pay shall be remitted by the Employer towards pension fund and the balance contribution 3.67% of Employees pay will be retained in Provident Fund Account. i.e. Employee's contribution of 12% goes to his individual provident fund and 8.33% out of 12% contribution of employer goes to Employees Pension Fund 1995 and the remaining 3.67 % goes to his individual provident fund. By this, each individual provident fund account will have 15.67% of wages every month along with interest accruable on the same. If the petitioner is allowed to remit 2% of wages only on the ground that they are remitting 10% of wages

towards Kerala Co-op Employees Self Financing Pension Scheme as against 8.33% of Employees Pension Scheme 1995, then each individual employees will loose 1.67% of wages along with interest accruable thereon every month in his Provident Fund account, thereby reduce the total quantum of amount in individual employees provident fund than what the employee would have been entitled at the time of exemption. That might not be the intention of legislature as well as Government of Kerala."

3. I have heard the learned counsel appearing for the petitioner as also the learned Standing counsel appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that under Section 6 of the EPF Act, a contribution, both by the employer as well as the employee, to the fund created under the employees under the said Act is envisaged at the rate of 10% of the relevant amount. Both the employer and employee make a contribution at the rate of 10% each to the said fund. From out of the contribution made by the employer to the fund, Section 6A of the EPF Act read with clause 2(a) of the Employees' Pension Scheme contemplates

that an amount not exceeding eight and one-third per cent of the relevant amount will be deducted towards the contribution of the employer to the pension scheme under the EPF Act. It is from this requirement, of payment of eight and one-third per cent of the relevant amount, that the petitioner stood exempted by virtue of Ext.P1 Notification. As a consequence, the petitioner became liable to pay the differential amount (12% - 8.33%), to the respondents by way of his contribution under Section 6 of the EPF Act. The contention of the learned counsel for the petitioner that inasmuch as he was paying an amount of 10% of the relevant amount as his contribution under the the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, he was obliged to pay only the differential 2% to as his contribution under Section 6 of the EPF Act is flawed, since the said contribution made by the petitioner at a higher rate of 10% was in accordance with an entirely different Scheme, and the exemption that was granted to the petitioner was from the specific obligation under the EPF Act and nothing more. Resultantly, I find that the assessment completed against the petitioner by Ext.P2 assessment order does not require to be interfered with in these proceedings

under Article 226 of the Constitution of India. The writ petition in its challenge against the same, therefore, fails and is dismissed. The amounts remaining to be paid by the petitioner pursuant to Ext.P2 assessment order, together with interest thereon, shall be paid to the respondents within an outer time limit 3 months from the date of receipt of a copy of this judgment.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

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