



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Wednesday the 25th day of May, 2022)

Appeal No. 470/2019

Appellant : The Malappuram District
Co-operative Bank Ltd.,
P.B. No. 8
Malappuram – 676 505.

By Adv. V.Krishna Menon
Adv. Prinsun Philip

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006

By Adv. Dr. Abraham.P.Meachinkara

This case coming up for hearing on 13/04/2022 and this Industrial Tribunal-cum-Labour Court issued the following order on 25/05/2022.

ORDER

Present appeal is filed from order No. KR / KK / 2722 / Enf-3(5) / 2019 / 3121 dt. 03/09/2019 U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') directing the

appellant to remit the balance dues payable towards Employees Pension Fund 1995 for the period from 11/1995 to 01/1998.

2. Appellant is an establishment covered under the provisions of the Act with effect from 01/09/1970. The appellant had been complying with the provisions of the Act upto 30/06/2009. As per order No.KR/RO/Enf-1(8)/9/1142 dt.26/05/2009, the respondent informed that the State Co-operative bank and 14 District Co-operative banks are excluded from the purview of the Act U/s 16(1) (b) with effect from 01/04/2005. The appellant had been accordingly instructed not to remit contributions to various accounts in respect of its employees. The employees of the District Co-operative banks challenged the order before the Hon'ble High Court of Kerala in W.P.(C) No. 10754/2010 and other similar cases. The Hon'ble High Court allowed the members to continue contributing to the respondent organization. The Kerala State Co-operative Employees Pension Board preferred Writ Appeal Nos.1019/2012 and connected cases. The Division Bench of the Hon'ble High Court refused to interfere with the common judgment in W.P.(C) No.10754/2010. Kerala State Co-operative Employees Pension Board preferred appeals before the Hon'ble

Supreme Court and the said appeals are still pending for consideration. While so the respondent issued a letter dt. 26/12/2017 calling upon the appellant to furnish details regarding the remittance of EPF Pension contribution in respect of the staff of the bank during the period 1995 to 1998. A copy of the letter is produced and marked as Annexure A1. The appellant furnished the letters relating to the remittance of EPF Pension contribution during the period 1995 to 1998 along with copies of available challans. A copy of the letter dt. 23/05/2018 is produced and marked as Annexure A2. The respondent vide letter dt. 13/07/2018 directed the appellant to confirm the remittance of difference of contribution to the pension fund. A copy of the letter dt.13/07/2018 is produced and marked as Annexure A3. An Enforcement Officer attached to the office of the respondent vide his letter dt. 06/08/2018 demanded the some information. Copy of the letter dt.06/08/2018 is produced herewith and marked as Annexure A4. The appellant vide letter dt. 21/08/2018 informed the respondent that the appellant had already transferred the entire amount under the family pension scheme and provident fund account at 8.33% to the pension account and that this had already been informed to the respondent vide letter dt. 03/11/1998. A copy of the letter dt.

21/08/2018 along with Annexure is produced herewith and marked as Annexure A5. On receipt of the letter dt. 03/11/1998, the office of the respondent had by letter dt.17/12/1998 informed the appellant that the interim order of the stay have been vacated by the Hon'ble High Court. The appellant had submitted Form 3A and 6A as per the statutory rates of the contribution. A copy of the letter dt.19/12/1998 is produced and marked as Annexure A7. On receipt of Annexure A5 letter the appellant was issued with a notice dt.19/12/2018 calling upon the appellant for a hearing proposed to be held on 29/01/2019 and the appellant had been directed to produce Form 3A and 6A from 11/1995 to 01/1998 as well as copies of challan in token of payments made for the period 11/1995 to 01/1998. A copy of the notice is produced and marked as Annexure A8. The appellant filed a detailed statement dt. 29/01/2019 wherein it had been stated that the appellant had remitted the difference of contribution to the pension fund for the period 11/1995 to 01/1998 and the remittance was through book adjustment. It was further informed that employees who retired before the implementation of the Pension Scheme 1995 had remitted the dues after their retirement as per instructions received from provident fund office. The appellant had already

produced Form 3A for the period 11/1995 to 01/1998. A copy of the letter dt.25/01/2019 alongwith its enclosures is produced and marked as Annexure A9. The respondent without conducting any hearing on 29/01/2019 scheduled the hearing on 07/02/2019 and the appellant had called upon to furnish the Balance Sheet for the year 1995-1996 to 1999-2000, provident fund ledger account for the year 1995-1996 to 1996-1997 and provident fund annual statement issued by the respondent in respect of some employees for the year 1995-1996 to 1999-2000. True copy of the notice dt. 30/01/2019 is produced and marked as Annexure A10. The authorized Officer of the appellant attended the hearing on 07/02/2019 and produced the relevant records as sought in Annexure A10 notice. The respondent issued another notice dt. 20/05/2019 directing the appellant to furnish **'the court case file'** or to remit the contribution payable for the period 11/1995 to 01/1998. A copy of the notice dt. 20/05/2019 is produced and marked as Annexure A11. The appellant sent a reply dt.14/06/2019, a copy of which is produced and marked as Annexure A12. The respondent again issued a notice dt. 25/06/2019 calling upon the appellant to attend the hearing on 19/07/2019 for the enquiry U/s 7A of the Act. True copy of the notice

dt.25/06/2019 is produced and marked as Annexure A13. The General Manager of the appellant attended the hearing and reiterated its earlier stand. The respondent without considering any of the submissions made by the appellant issued an order directing the appellant to remit the balance amount in Account No. 10. A copy of the said order is produced and marked as Annexure A14. In an earlier enquiry U/s 7A of the Act proposed vide notice dt. 04/07/2012, the respondent had no case that any amounts for the period from 1995 to 1998 were due from the appellant. In the 7A enquiry, it was alleged that the appellant has not remitted the contribution from July 2009 onwards. A copy of the notice dt. 04/07/2012 is produced and marked as Annexure A15. The appellant questioned the Annexure A14 order before the Hon'ble High Court of Kerala by filing W.P.(C) No.17617/2012. A copy of the Writ Petition No.17617/2012 is produced and marked as Annexure A16. An employee of the appellant also got himself impleaded in the Writ Petition and filed counter. A copy of the said counter is produced and marked as Annexure A17. The appellant filed a reply affidavit to Annexure A16 counter affidavit. A copy of the reply affidavit is produced herewith and marked as Annexure A18. A learned single judge of the Hon'ble High Court by judgment

dt. 23/10/2013 disposed off the writ petition restraining the respondent from initiating any coercive action against the appellant and further observed that the judgment in Writ Appeal No.1019/2012 and connected cases, reported in 2012 (3) KLT 820 has to be followed by the Kerala State Co-operative Employees Pension Board. A copy of the judgment in W.P.(C) No. 17617/2012 is produced and marked as Annexure A19. The fourth respondent in W.P.(C) No.17617/2012 challenged the judgment before the Division Bench of the Hon'ble High Court of Kerala in Writ Appeal No. 36/2014. The Division Bench by judgment dt. 10/02/2014 set aside the Annexure A19 judgment and dismissed Writ Petition No. 17617/2012. A copy of the judgment in Writ Appeal No. 36/2014 is produced and marked as Annexure A20. By virtue of Annexure A20 judgment, the respondent has permitted to proceed the enquiry contemplated U/s 7A of the Act for determining the dues from the appellant from 2009 onwards as contemplated in the notice dt. 04/07/2012. However Kerala State Co-operative Employees Pension Board preferred SLP No. 10274/2014 before the Hon'ble Supreme Court and the appeal is still pending consideration before the Hon'ble Supreme Court. While so a few retired and serving employees of the appellant approached the Hon'ble High

Court and filing W.P.(C) No. 1732/2019 seeking among other things a direction to the provident fund authorities to consider their claim for grant of revised pension on higher salary. The Hon'ble High Court further ordered that provident fund authorities are free to proceed against the appellant in accordance with the provisions of the Act. A copy of the judgment in W.P.(C) No. 1732/2018 is produced and marked as Annexure A21. On the basis of the above observation in Annexure A21, the respondent issued a letter dt. 28/11/2019 according to which appellant had been informed that the difference in pension contribution for the period from 11/1995 to 02/1998 had been quantified as Rs.9,92,619/- and calling upon the appellant to remit the said amount. A copy of the communication dt.28/11/2019 is produced and marked as Annexure A22. The demand of contribution for the period 11/1995 to 01/1998 after 20 years is barred by delay and latches. The appellant produced all available records to show the remittance at the prescribed rate. Even as per Annexure A15 notice the respondent has no case that the appellant had not remitted contribution at the prescribed rates for the period 1995 to 1998. Annexure A14 order is a complete non-speaking order. The respondent cannot demand an un-quantified liability from

the appellant. Even when there is no limitation, proceedings have to be initiated within a reasonable time.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant was remitting contribution as per the scheme provisions. Employees Pension Scheme 1995 was introduced with effect from 16/11/1995 and as per the said scheme 8.33% of the employers' share has to be paid into account No.10 as pension contribution with effect from 16/11/1995. The establishment failed to remit the statutory rate of contribution @ 8.33% towards the Pension Scheme for the period from 11/1995 to 01/1998. The employer remitted the contribution @ Re 1.16% of in the Pension Fund which was the statutory rate of contribution payable under the erstwhile Family Pension Fund Scheme. This is evident from the inspection report of the Enforcement Officer dt.11/02/1997 and 05/02/1998. Copies of the inspection reports are produced and marked as Annexure R1. It is clear from the remittance details furnished in the inspection reports that the employer started paying Pension Fund contribution @ 8.33% from 03/1998 only. The employer vide its letter dt. 31/03/1998 has admitted the dues in account

No.10 under Employees Pension Scheme. Copy of the letter dt. 31/03/1998 is produced and marked as Annexure R2. The contention of the appellant that the remittance in account No.10 was made by book adjustment cannot be accepted, as there is no provision for book adjustment in the respondent organization. The appellant remitted contribution @ 1.16 % in Pension Fund which was statutory rate of contribution payable under Family Pension Scheme 1971. The appellant did not remit the difference of contribution in Employees Pension Fund or produced any evidence regarding the remittance. An enquiry U/s 7A was initiated to assess the dues. The General Manager of the bank attended the hearing on 26/08/2019. He has not produced any evidence for remittance in Pension Fund for the period. Hence orders were issued directing the appellant to remit the balance dues payable towards Employees Pension Scheme 1995 for the period from 11/1995 to 01/1998. No time limit is prescribed for determining any amount due from the employer. The shortage in remittance cannot be written off just because of there is delay in noting the lapse on the part of the appellant. The notice dt. 04/07/2012 issued U/s 7A has no relevance to the present proceedings. Subsequently vide this office letter dt. 25/06/2019 the dues in account No. 10 was calculated after

adjusting the remittance already made for the period 11/1995 to 01/1998. The SLP pending before the Hon'ble Supreme Court has got nothing to do with the present case. 120 employees of the appellant filed W.P.(C) No. 1732/2019 before the Hon'ble High Court of Kerala praying for higher pension on actual salary. The Hon'ble High Court vide judgment dt. 01/11/2019 directed the provident fund authorities as well as the appellant to look into the matter for revision of pension on higher salary. As the employer did not remit the difference in contribution in Account No.10 for the period 11/1995 to 02/1998 the matter could not be considered.

4. The appellant is challenging an order issued U/s 7A of the Act directing the appellant to remit the difference in contributions in the pension account for the period from 11/1995 to 01/1998. The appellant is also indirectly challenging the Annexure A22 communication dt. 28/11/2019 issued by the respondent directing the appellant to remit an amount of Rs.9,92,619/- being the difference in contribution for the period 11/1995 to 02/1998, so that higher pension to the 120 employees as directed by the Hon'ble High Court in W.P.(C) No. 1732/2019 can be considered. It is clarified that the

letter dt. 28/11/2019 cannot be challenged in an appeal U/s 7(I) of the Act.

5. The appellant is an establishment covered under the provisions of the Act and therefore they are liable to remit the contribution as per the Act and scheme provisions. Employees Provident Fund Organization was implementing three schemes, Employees Provident Fund Scheme, Employees Deposit Linked Insurance Scheme and Employees Family Pension Scheme. From 16/11/1995 the Employees Family Pension Scheme 1971 is replaced by Employees Pension Scheme 1995. Under the Employees Family Pension Scheme, the contribution payable was 1.16% of the wages paid to the employees. Under the Employees' Pension Scheme the employer is liable to remit 8.33% of the employers' share of the contribution to the Pension Fund. According to the learned Counsel for the respondent, the appellant failed to remit the Employees' Pension Fund contribution @ 8.33% from 16/11/1995 to 02/1998 and continued remitting the earlier contribution @ 1.16%. 120 Employees of the appellant approached the Hon'ble High Court of Kerala in W.P.(C) No.1732/2019 and the Hon'ble High Court directed the respondent organization to consider the case of the

employees for higher pension. While processing those cases the respondent found that the appellant establishment remitted the contribution only @ 1.16 % and therefore directed the appellant to remit the difference in contribution. The appellant took a stand that the difference in contribution is already remitted by book adjustment earlier and therefore no further amount is to be remitted by the appellant. The respondent authority initiated an enquiry U/s 7A of the Act. The appellant appeared before the respondent and contented that the amount had already been remitted by book adjustment and no further amount is outstanding. The respondent authority after verifying all the records produced by the appellant, the report of the Enforcement Officers and the records of the respondent's office came to the conclusion that the appellant failed to remit the contribution for the period from 11/1995 to 02/1998 in full and therefore directed the appellant to remit the contribution .

6. In this appeal, the learned Counsel for the appellant took a stand that the claim of the respondent as per the impugned order is barred by limitation. According to him even if there is no limitation provided in the Act, action shall be taken within a reasonable period. He relied on the decision of the

Hon'ble Supreme Court in **State of Madhya Pradesh and Another Vs Bhailal Bhai and Other**, AIR 1964 SC 1006 to argue that the delay in raising this dispute is unreasonable and cannot be condoned. The above case pertain to sales tax as per Madhya Pradesh Sales Tax Act on sales tax imposed on Tobacco. The Hon'ble High Court was considering the delay in filing a Writ Petition under Article 226 of the Constitution. In this case the issue is with regard to release of pension to the employees under the Social Security Scheme and may not be possible to adopt the same standard of limitation provided by the Hon'ble Supreme Court for challenging a fiscal demand under Article 226 of the Constitution. The learned Counsel for the appellant also relied on the decision of the Hon'ble Supreme Court in **Municipal Corporation of Greater Bombay Vs Bombay Tyres International Ltd and Others**. In the above case the Hon'ble Supreme Court held that in ascertaining what is the reasonable time the Courts have often taken note of period of limitation prescribed under general law of limitation for filing suits. The above case pertains to the refund of money consequent on the direction of the Hon'ble High Court and it has no relevance to the facts of the present case wherein the recovery of the contribution is linked to the payment of pension to the ex-employees of the appellant

establishment which cannot be stopped by general rules of limitation as long as there is no limitation provided under the Act.

7. The learned Counsel for the appellant has taken this Tribunal through the history of various cases challenging the Pension Scheme introduced by the government of Kerala for the employees of the State Co-operative Bank and different District Co-operative Banks. It is felt that those case has no relevance to the facts of the present case. The case of respondent organization is that for the period from 11/1995 to 02/1998, the appellant failed to remit contribution under Employees Pension Scheme 1995 and continued remitting the contribution under erstwhile Family Pension Scheme 1971. Under the Family Pension Scheme, the appellant was liable to remit contribution at the rate of 1.16% of the wages and as per the Employees' Pension Scheme 1995, the appellant is liable to remit contribution at the rate of 8.33% of the employers contribution. The case of the respondent is that the appellant remitted contribution @ 1.16% only till 02/1998. The appellant's case is that the difference in contribution is made by book adjustment by the appellant. The learned Counsel for the respondent is very clear on the issue that there is no provision for

book adjustment in the Employees Provident Fund organization. The learned Counsel for the appellant also could not clarify as to what is the nature of book adjustment that the appellant establishment has done to ensure that the difference in contribution is remitted by the appellant. The appellant also failed to produce any document to substantiate his claim. The learned Counsel for the appellant relied on certain communication between the appellant and the office of the respondent. He relied on Annexure A2 letter and the subsequent correspondence between the appellant and respondent organization. The appellant is relying on some negative evidence to substantiate their case.

8. To sum up the argument on either side, the learned Counsel for the appellant contended that the contribution under Pension Scheme 1995 had already been remitted by the appellant for the period from 11/1995 to 02/1998 and he also argued that adequate evidence had already been produced before the respondent authority. The learned Counsel for the respondent pointed out that it is clear from the Annexure R1 and R2 inspection reports dt.11/02/1997, 05/02/1998 and 14/01/1999 that the appellant remitted contribution only @

1.16% and not the contribution required under Employees' Pension Scheme @ 8.33%. It is not clear from the impugned order as to what are the documents relied on by the respondent authority and why the documents produced by the appellant could not be considered. Further the respondent should be in a position to track the remittance, if the contribution is received in their account during the relevant point of time. It is also not clear with regard to the book adjustments that is claimed to have been done by the appellant for adjusting the difference in contribution. In the absence of any clear evidence which has got a direct implication in deciding the quantum of pension to be paid to the employees of the appellant, it is not possible to take a final decision in this appeal. As rightly pointed by the learned Counsel for the appellant, the respondent even failed to quantify the dues in the impugned order which is subsequently communicated vide Annexure A22 dt. 28/11/2019.

9. Considering the facts, circumstances, pleadings and evidence in this appeal, it is not possible to sustain the impugned order .

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-

examine the whole issue on the basis of the documents produced by the appellant and also the evidence available with the respondent and arrive at a conclusion and quantify the dues, if necessary. The respondent shall issue notice to the appellant and decide the matter within a period of 6 months. If the appellant failed to appear or produce the records called for the respondent is at liberty to decide the matter according to law.

Sd/-

(V. Vijaya Kumar)
Presiding Officer