

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V**

Thursday, the 29th day of February 2024 / 10th Phalguna, 1945
WP(C) NO. 8177 OF 2024

PETITIONER:

**V.R.BALU AGED 60 YEARS S/O VELAPPAN NAIR, TC 24/1437, FLAT – 11B,
LAKSHMINILAYAM HEERA PALACE, KOWDIAR, THIRUVANANTHAPURAM, PIN-695003**

RESPONDENTS:

1. UNION OF INDIA (UOI), REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF LABOUR & DEPARTMENT OF EMPLOYMENT, NEW DELHI, PIN-110001
2. REGIONAL PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANISATION (EPFO), BHAVISHANIDHI BHAVAN, PATTOM PALACE, THIRUVANANTHAPURAM, PIN-695004
3. REGIONAL PROVIDENT FUND COMMISSIONER-1 (PENSION), EPFO HEAD OFFICE, MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA, BHAVISHYA NITHI BHAVAN, 14- BHIKAJI CAMA PALACE, NEW DELHI, PIN-110066
4. KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, TC 31/2312, KINFRA HOUSE, SASTHAMANGALAM, THIRUVANANTHAPURAM, PIN-695003

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased i) Stay of Ext.P13 circular dated 14.02.2024 issued by the EPFO in respect of the petitioner to calculate pension on pro rata basis as against to calculate his pension taking an average of 60 months as per the Pension Scheme, 1995, and ii) issue a direction to the second respondent to intimate the petitioner, after considering Ext.P11, that what would be the monthly pension, if the petitioner remits an amount of Rs.28,29,782/- as requested in Ext.P9, pending disposal of the Writ Petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S P.N.MOHANAN, C.P.SABARI, AMRUTHA SURESH & GILROY ROZARIO, Advocates for the petitioner, SMT. NITA N.S, Advocates for R2 & R3, the court passed the following:

RAJA VIJAYARAGHAVAN V, J.

W.P.(C) No.8177 of 2024

Dated this the 29th day of February 2024

ORDER

The learned DSGI takes notice for the 1st respondent. Smt.Nitha N.S, the learned Standing Counsel, takes notice for respondents 2 and 3. Sri.P.U Shailajan, the learned Standing Counsel, takes notice for the 4th respondent.

2. Sri.P.N Mohanan, the learned counsel appearing for the petitioner, points out that the petitioner had attained superannuation on 28.2.2022. The grievance of the petitioner is that an internal circular has been issued, a copy of which is produced as Ext.P13 on 14.2.2024, wherein directions have been issued to calculate the pension on a pro-rata basis instead of calculating the pension taking an average of 60 months as per the Pension Scheme, 1995.

3. The learned counsel would refer to Paragraph No.11 (4) of the Pension Scheme and it is submitted that the existing members as on the 1st day of September 2014, had been contributing on salary exceeding Rs.6,500/- at the option of the employer and the employee, is entitled to exercise a fresh

option jointly and continue to contribute on salary exceeding Rs.15000/- per mensem. It is submitted that those existing members who prefer such an option are entitled to a higher salary based on such a fresh option.

4. It is submitted by the learned counsel that the petitioner has been served with Ext.P9 letter issued by the 2nd respondent calling upon him to remit a sum of Rs.28,29,782/- on or before 30.4.2024. It is submitted that the respondents have now come up with Ext.P13 Circular ordering that the pension of the retirees who retired after 1.9.2014 shall be calculated on pro-rata basis. According to the learned counsel, if pension is calculated taking an average of 60 months preceding the exit from the Pension Scheme, the petitioner would be entitled to a pension of Rs.52,361/-. However, if pension is calculated on the basis of Ext.P13 Circular, the pension would drop down to Rs.31,161/-. This, according to the learned counsel, cannot be sustained under law. He contends that the issuance of the Circular will militate against the earlier orders and also the law laid down by the Supreme Court in **Employees' Provident Fund and Organisation and Another**¹.

¹ Employees' Provident Fund and Organisation and Another v. Sunil Kumar B [2022 (7) KHC 12].

5. The learned counsel requests that as an interim measure Ext.P13 be stayed. He also request that directions be issued to the 2nd respondent to intimate the petitioner as to the monthly pension he would be entitled if he remits a sum of Rs.28,29,782/- as has been directed in Ext.P9.

6. The learned Standing Counsel submits that Ext.P13 is an internal Circular and the same cannot be stayed. He seeks an adjournment to get instructions.

7. The learned standing counsel shall file a statement detailing the pension amount that would be received by the petitioner if he were to remit the amount as ordered in Ext.P9.

Post on 7.3.2024.



Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

APPENDIX OF WP(C) 8177/2024

- Exhibit P9** A TRUE COPY OF THE LETTER DATED 08.02.2024 ISSUED BY THE EPFO
- Exhibit P11** A TRUE COPY OF THE LETTER DATED 18.01.2018 ISSUED IN RESPECT OF ONE MR.RAJAGOPALAN NAIR
- Exhibit P13** A TRUE COPY OF THE CIRCULAR DATED 14.02.2024 ISSUED BY THE EPFO

