

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 194 of 2012

MONDAY, this the 22nd day of July, 2013

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

1. N. Satheesan, aged 60 years, S/o. P. Narayanan, Retired Assistant Provident Fund Commissioner, Residing at CRA 3A, Sree Chithira Lane, Vanchiyoor, Thiruvananthapuram.
2. S. Mahalingam, aged 60 years, S/o. Late N. Sankaranarayana Pillai, Retired Regional Provident Fund Commissioner-II, Residing at T.C. 26/1690, Leela Bhavan, Uppalam Road, Thiruvananthapuram-1. **Applicants**

(By Advocate – Mr. K.P. Satheesan)

V e r s u s

1. Union of India, represented by the Secretary, Ministry of Labour & Employment, Government of India, Shram Shakti Bhavan, Raffi Margh, New Delhi – 110 001.
2. The Chairman, Central Board of Trustees, Employees Provident Fund Organization, Bhavishya Nidhi Bhavan, Bhikaji Cama Place, New Delhi – 110 066.
3. The Central Provident Fund Commissioner, Employees Provident Fund Organization, Head Office, 14, Bhikaji Cama Place, New Delhi-110 066.
4. The Regional Provident Fund Commissioner-1, Employees Provident Fund Organization, Regional Office, Thiruvananthapuram-695 004.
5. V.G. Divakaran, Retired Regional Provident Fund Commissioner-I, Residing at Saranam, House No. 48/313, Elamakkara PO, Kochi-20.
6. V. Krishnamoorthy, Retired Regional Provident Fund Commissioner-I, Residing at Kousik, Plot No. 44, C.G.S. Nagar, Pappanamcode, Thiruvananthapuram – 16.



7. A. Hamsa, Retired Regional Provident Fund Commissioner-II, Residing at Kaippally, T.C. 2/263, House No. 10, Aiswarya Nagar, Kesavadasapuram, Thiruvananthapuram-4.
8. P.R. Krishnankutty Nair, Retired Regional Provident Fund Commissioner-I, Residing at Krishna Vihar, Gandhi Nagar 2nd Street, Vazhuthakkad, Thiruvananthapuram-14.
9. N. Aravindakshan Nair, Retired Additional Central Provident Fund Commissioner, Residing at Radha Bhavan (Kovilakam), Opposite Sahrudaya Hospital, Thathampally PO, Alappuzha – 13. **Respondents**

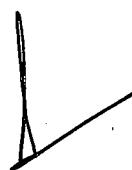
[By Advocate – Mr. S. Jamal, ACGSC (R-1)
 Mr. N.N. Sugunapalan, Sr.
 Mr. S. Sujin (R2-4)
 Mr. T.V. Vinu (R5)
 Mr. C.S.G. Nair (R6-8)]

This application having been heard on 11.07.2013, the Tribunal on

22-07-13 delivered the following:

O R D E R

The 1st applicant retired as Assistant Provident Fund Commissioner on 31.10.2011 from the office of the Regional Provident Fund Commissioner, Thiruvananthapuram. The 2nd applicant retired as Regional Provident Fund Commissioner-II at Sub Regional Office, Kannur on 31.1.2012. While they were working as Enforcement Officers (Recovery) in the office of the Regional Provident Fund Commissioner, Thiruvananthapuram, based on a warrant of attachment issued by the Recovery Officer, Thiruvananthapuram, had attached the properties of M/s. Premier Morarji Chemical Company Ltd., Alappuzha on 22.7.1993. The Hon'ble High Court of Kerala in CP No. 17 of 1993 ordered the winding up of the above company and directed the Recovery Officer, Employees Provident Fund Organization, Trivandrum, to hand over the assets of the Company to the Official Liquidator appointed by



the High Court of Kerala. However, the Official Liquidator had reported that the entire assets attached by the applicants were not available and accordingly, vide order dated 1.7.1999 Hon'ble High Court in report No. 1 in CP No. 17/1993 held that the recovery officer is liable to hand over the articles mentioned in Annexure A to the official liquidator. In CA No. 362 of 1999 in CP No. 17 of 1993 the recovery officer had prayed for an order declaring that the remaining items are not available for transfer to the official liquidators and therefore they need not be transferred to the official liquidator. While disposing CA No. 362 of 1999 as per order dated 13.1.2003 the Hon'ble High Court observed that it is a fit case where loss should be recovered from the Department or from the persons responsible for the attachment and destruction of all the valuables of the Company due to their own acts. Departmental proceedings under Rule 10 of EPF Staff (CC&A) Rules, 1971 were initiated against both the applicants for misconduct in executing the warrant of attachment of properties which culminated in imposing penalty as per Annexures A4 and A5 orders and the applicants have undergone the penalty. The appeal filed by the 1st applicant against Annexure A4 order before the 2nd respondent was rejected. The review petition filed against the said order of rejection is pending before the 2nd respondent. The appeal filed against Annexure A5 order by the 2nd applicant before the 2nd respondent is also pending. The official liquidator filed a statement in CP No. 17 of 1993 on 28.10.2011 before the Hon'ble High Court of Kerala claiming a sum of Rs. 94,385/- being the value of assets stated to have been lost while the property was under attachment by the then recovery officer EPFO with interest at the rate of 12% from

22.07.1993 till the date of full payment. The respondents have filed a detailed objection statement before the Hon'ble High Court of Kerala on 19.1.2012 to the aforesaid claim and the matter is pending before the Hon'ble High Court of Kerala. As the applicants retired on 31.10.2011 and 31.1.2012 respectively, it was decided to withhold the amount of claim of Rs. 95,385/- in equal shares and the interest thereon at 12% from 22.7.1993 from the terminal benefits payable to them vide Annexure A9 order dated 30.1.2012. Aggrieved the applicants have filed this OA for the following reliefs:-

- “i) to issue an order or direction to the 2nd respondent to pass appropriate orders on Annexure A9 Review Petition filed by the first applicant against Annexure A4 order;
- ii) to issue an order or direction to the 2nd respondent to consider and pass appropriate orders on Annexure A8 appeal filed by the second applicant against Annexure A5 order;
- iii) to set aside Annexure A9 order issued by the 4th respondent recovering an amount of Rs. 1,50,699/- from the leave encashment of the first applicant;
- iv) to set aside Annexure A9 order issued by the 4th respondent recovering an amount of Rs. 1,52,115/- from the DCRG amount of the second applicant;
- v) to declare that the Applicants have not liable to pay any amount to the Department on any account since they have not caused any pecuniary loss to the Department while the applicants were in office;
- vi) to issue an order or direction to the 4th respondent to refund the amounts recovered from the applicant's terminal benefits pursuant to Annexure A9 order with 18% interest;
- vii) to issue such other order or direction as this Hon'ble Tribunal may be deem fit and proper in the facts and circumstances of the case.”

2. The applicants contended that they had executed the warrant of attachment as Enforcement Officers and the report given by them to the 5th respondent was accepted without any objection. Therefore, the recovery of the amount from the terminal benefits of the applicants is arbitrary. They



had discharged their duties to the satisfaction of the 5th respondent. They were promoted and transferred to Tamil Nadu as Assistant Provident Fund Commissioner in 1994 and 1995 respectively. All the subsequent activities were done by the respondents 6 to 9. Even if there is any loss the same is to be recovered from respondents 6 to 9 and not from them. The 4th respondent has already challenged the claim of the official liquidator before the Hon'ble High Court of Kerala. No notice was given to the applicants before fixing their liability. Withholding of Rs. 1.5 Lakhs each from the applicants is done without following the rules or procedure for fixation of liability. The only allegation against the applicants is that they prepared a Mahazar in a very casual manner which was alleged for the first time after a period of 11 years from 2004. On the basis of the said allegation penalties were imposed on them against which appeal/revision is pending before the appropriate authority. Annexure A9 order violates the principles of natural justice. Applicants were not given a notice before fixing their liability. They were not even heard.

3. In the reply statement filed by respondents Nos. 2 to 4 it is submitted that the amount withheld from the retirement benefits of the applicants is provisional and would be released to the applicant once the claim statement dated 28.10.2011 filed by the official liquidator of the Hon'ble High Court is dismissed and if the Hon'ble High Court is upholds the claim of the official liquidator the applicants will be given enough opportunity to present their case before effecting the final recovery. As Annexure A9 proceedings are issued provisionally in view of the official liquidator's claim statement,

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the instant OA is pre-mature. As the applicants were the persons responsible for attachment and as a claim from the official liquidator was filed on 28.10.2011, it was decided to withhold the amount of claim with interest from the terminal benefits of the applicants. Therefore, Annexure A9 proceedings are legal.

4. The 5th respondent in his reply statement submitted that he was promoted and posted as Regional Provident Fund Commissioner, Chennai in 1993 i.e. 5 months after the date of issue of warrant of attachment. He is not personally aware of the subsequent actions taken by the successive officers in the matter of M/s. Premier Morarji Chemical Company Limited, Alappuzha. Attachment and recovery proceedings being a continuous act, it is the duty and responsibility of the successive officers to adopt prompt follow up action. He retired from service as Regional Provident Fund Commissioner-I on 31.07.2008.

5. The 6th respondent submitted that the attachment of the properties was accepted by the 5th respondent which was prior to his taking over charge as Recovery Officer. From the order of the Hon'ble High Court in CA No. 362 of 1999 dated 13.1.2003 it is clear that the applicants are solely liable for the loss if any and that he is in no way responsible. During his tenure as Recovery Officer, the attached properties were with the security agency and security charges were being paid regularly to the security agency till his promotion and transfer in 1996.

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6. The 7th respondent submitted that he had not succeeded the 6th respondent as Recovery Officer. All what is stated about his role is absolutely incorrect. He did not sanction any amount to the security agency nor did he transfer any file relating to M/s. Premier Morarji Chemicals Ltd., and he is no way responsible for the loss if any.

7. The 8th respondent in its reply statement submitted that the security agency was appointed by the 5th respondent in 1993. The security agency has claimed security charges from March, 1998 from the Regional Officer, Thiruvananthapuram. The security agency has dis-continued the deployment of security personnel from March, 1998 onwards without waiting for any alternate security arrangements to be made, which resulted in the theft. Annexure A2 dated 23.2.1999 was only formal communication of termination of service of the security agency almost one year after they had unilaterally withdrawn the security personnel from the premises of M/s. Premier Morarji Chemicals Ltd. The basis for the claim filed by the Official Liquidator has its origin in the irregular action taken by the applicants in attaching the movable and immovable properties of M/s. Premier Morarji Chemicals Ltd., Alleppey. The applicants are trying to shift the responsibility to others for the loss occurred on account of their irresponsible action.

8. In the rejoinder statement filed by the applicants it was submitted that as per paragraph 3 of the reply statement the Hon'ble High Court by order dated 1.7.2009 had held that the recovery officer is liable to hand over the

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articles mentioned in Annexure A to the official liquidator. At the relevant time the applicants were not the recovery officers and they were only enforcement officers who executed the warrant of attachment. The security arrangements were withdrawn by the 8th respondent without making alternative security arrangement, resulting in destruction and loss of attached properties. Hence, the observation of the Hon'ble High Court is applicable to the respondent No. 8. The 4th respondent has not taken any action for fixing the liability. The recovery was ordered by the 4th respondent violating all principles of natural justice to safeguard the interest of respondents 5 to 8. It is evident from the fact that even though the Hon'ble High Court has ordered to recover the loss on 13.1.2003, the 4th respondent has not taken any action to fix the responsibility for the loss till date. The only allegation against the applicants is preparation of Mahazar for which the applicants were punished by the Department vide Annexures A4 and A5 and against which the review/appeal is pending. At this stage withholding amount due to the applicants is purely colourable exercise of power. The responsibility of the applicants was over as soon the warrant was executed to the satisfaction of the 5th respondent. The 7th respondent had succeeded the 6th respondent as recovery officer. He passed the security bills and transferred filed to SRO, Cochin on 19.7.1997. At that time the 6th respondent was the recovery officer. The 6th respondent has not taken any action to rectify the defects in the excessive attachment. The attached articles were under safe custody by engaging security personnel by respondents 5 & 9 and the applicants were already transferred to Tamil Nadu during the tenure of the 6th respondent. The 8th respondent had no



authority to withdraw the security arrangement since all the files were under the jurisdiction of the 9th respondent. He had stated that the respondent No. 9 had failed to take alternate security arrangement and fix responsibility for the lapses.

9. I have heard the learned counsel for the parties and perused the records.

10. From the facts of the case it is clear that departmental proceedings were initiated against the applicants under Rule 10 of EPF Staff (CC&A) Rules, 1971. The penalty of reduction of pay by two stages for a period of two years with effect from the date of the order without increments during the period of reduction of pay and without the effect of postponing the future increments on the expiry of the period of reduction was imposed on the applicants holding that the charge regarding preparation of vague Mahazar by the applicants was proved. The observation of the Hon'ble High Court in the order dated 13.1.2003 in CA No. 362 of 1999 sticks to the applicants only to the extent of "callous or indifferent or willful attitude of the applicants in attaching the entire assets of the company without a proper inventory and entrusting with a security watchman". It is the 5th respondent who appointed the security agency in terms of Rule 24(2) of the Income Tax (Certificate Proceedings Rules), 1962. The observation of the Hon'ble High Court is that it is a fit case where the loss should be recovered from the department or from the persons responsible for the attachment and destruction of all the valuables of the company due to their own acts. It is

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not a direction. The applicants were held responsible for preparing a vague Mahazar and entrusting property worth lakhs of rupees with a watchman and punished. The review filed by the 1st applicant and the appeal filed by the 2nd applicant are pending before the appropriate authorities. The Court has not observed that applicants are the only persons from whom recovery should be made. The recovery could be either from the Department or the persons responsible for the attachment and destruction of all the valuables of the company due to their own acts. This observation does not provide a legally tenable foundation for the proceedings at Annexure A9. The fact that the applicants have already been punished for the lapses on their part is not taken into account. The respondents have already challenged the claim of the official liquidator on various grounds. Inter alia it is submitted that if the depreciation is duly accounted the amount of claim at Rs. 94,385/- calculated by the official liquidator and demanded from EPFO would not have been there at all. As per the statement of the respondents before the Hon'ble High Court the view of the official liquidator to pay Rs. 94,385/- with 12% interest from 22.7.1993 is untenable. In such a scenario the withholding of the amounts in question from the terminal benefits of the applicants without fixing the liability of the applicants as per rules and procedure for fixation of liability is highly arbitrary. No notice was given to the applicants before the fixing the entire liability on the applicants. They were not given an opportunity of being heard before effecting recovery. The principles of natural justice were violated in issuing the impugned Annexure A9 order. Annexure A9 order has been passed in view of the retirement of the applicants from service. In as much as the order fixed the entire liability on



the applicants alone without following the rules for fixing of liability, it is a colourable exercise of power to save others who may also be found responsible for the alleged loss. The provisional nature of the Annexure A9 order does not make it legally tenable. In the case of George Vs. State of Kerala - 1983 KLT 222, the Hon'ble High Court of Kerala has observed that liability should be quantified and fixed with notice to the employees.

11. In the result I hold that Annexure A9 order is arbitrary and illegal and that it is liable to be quashed. Hence, the OA is allowed as under:-

Annexure A9 order dated 30.1.2012 is set aside. The 4th respondent is directed to release the amount withheld from the applicants terminal benefits pursuant to Annexure A9 with interest at the rate of 9% per annum from the date the benefits fell due for payment till the date of actual payment. The 2nd respondent is directed to consider the review petition filed by the applicant No. 1 against Annexure A4 order and the appeal filed by the 2nd applicant against Annexure A5 order and dispose of the same under intimation to the applicants, within a period of three months from the date of receipt of a copy of this order.

12. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

“SA”