IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**WRIT PETITION NO. 5221 OF 2002**

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| | Shankarappa s/o Marotiappa Gadhave, Age 61 years, Occ. Retired as a Group Secretary, r/o Anand Nagar, Nanded, Taluka and District Nanded | **Petitioner** |
| | **V E R S U S** | |
| 1 | The Union of India, Through the Secretary Ministry of Labour and Industry, New Delhi | **Respondents** |
| 2 | The State of Maharashtra, through the Secretary Ministry of Co-operative and Textiles Mantralaya Bombay – 32 | |
| 3 | The Dy. Commissioner provision funds, Sub-Regional Office, [India] Aurangabad | |
| 4 | Nanded Zilla Dekrekh Sanstha Ltd. Behind Kalamandir Nanded, Taluka and District Nanded | |

Shri G.N. Chincholkar, Advocate for the petitioner
Shri S.B. Deshpande, Asst. Solicitor General of India for respondent no.1
Shri S.B. Pulkundwar, AGP for respondent nos.2 and 3/State
Shri A.A. Shelke, Advocate, holding for
Shri D.N. Suryawanshi, Advocate for respondent no.4

**CORAM : A. V. NIRGUDE &**
**V. K. JADHAV, JJ.**
**DATE : 12th March, 2015**

**ORAL JUDGMENT : [PER A.V. Nirgude, J.]**

1. This petition is filed by the retired employee of respondent no.4, which is a Co-operative Society. The petitioner became employee of respondent no.4 sometime in 1974. Earlier he was working else where. The provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, were

made applicable to respondent no.4 in 1974. Because of this change, respondent no.4 started deducting certain amount from salary of the petitioner as contribution to Provident Fund Scheme, which was established under Section 5 of the Act. A Scheme by name Employees' Family Pension Scheme, 1971 was started under provisions of the Employees' Provident Funds and Family Pension Fund Act, 1952. This Scheme was apparently made applicable to respondent no.4. However, it appears from the facts of the case that contribution from the employees of respondent no.4 were not collected since 1974.

2. In 1992, Assistant Provident Fund Commissioner sent letter to respondent no.4 informing him that the establishment was brought within purview of Provident Fund Act, 1952, and Scheme made therein with effect from 1974. This letter however mentioned that the Family Pension Scheme was made applicable only from 1st February, 1992. Thereafter, respondent no.4 started deducting petitioner's contribution towards family pension scheme also. The petitioner attained age of superannuation in 1998. Before his retirement, in 1995, a new Scheme by name Employees' Pension Scheme, 1995 came into force. From 1995, he contributed certain amount towards this Scheme. The petitioner retired in 1998, and the question arises as to whether the petitioner is entitled for the benefit of Pension Scheme of 1995.

3. Paragraph no.12 of the Scheme is relevant provision for determining this question. An employee who was member of Family Pension Scheme of 1971 is held to be eligible for taking benefit of the Scheme of 1995. However, as said above, since the petitioner became member of 1971 scheme only in 1992, his membership of such scheme was of only 3 years 9 months duration. Such a short period was held to be insufficient to get benefit of Scheme of 1995. Paragraph no.9 of the Scheme of 1995 provides rule of determination of eligible service. Proviso to sub-paragraph 'b' makes it clear that past service for which contribution towards Family Pension Scheme 1971 is received, can be counted as eligible service. As said above, the petitioner did not contribute any amount prior to 1992 for Family Pension Scheme, 1971. The eligible service even for 1971 Scheme was only 3 years and 9 months. This was not sufficient. The authorities rightly refused benefit of the Scheme of 1995 to the petitioner. The petitioner cannot get benefit of Pension Scheme, 1995. The Petition stands dismissed.

Rule stands discharged.

**( V.K. JADHAV, J. )** **( A.V. NIRGUDE, J. )**