IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 902 OF 1995
WITH
CIVIL APPLICATION NO. 7580 OF 2014

1. Marathwada Agricultural University,
Parbhani, through its Registrar,
at Parbhani, Dist. Parbhani.

2. Vice-Chancellor,
Marathwada Agricultural University,
Parbhani, through its Registrar,
at Parbhani, Dist. Parbhani. ..Petitioners

Versus

1. Union of India

2. Assistant Provident Fund Commissioner,
Sub Regional Office, Aurangabad.

3. The State of Maharashtra. ..Respondents

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Advocate for Petitioner : Shri M.N.Navandar
ASG for Respondent 1 : Shri S.B.Deshpande
Standing Counsel for Respondent 2 : Shri K.B.Chaudhari
AGP for Respondent 3 : Shri S.G.Sangle

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 09, 2015

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties at length.

2. This petition was admitted by order dated 19.4.1995 and interim relief in terms of prayer clauses (C) and (D) was granted.

3. The petitioner No.1 is an Agriculture University. The petitioners are aggrieved by the notice dated 16.5.1994, 2.8.1994, order dated 7.9.1994 passed under Section 7A, the order dated 5.12.1994, notice dated 5.12.1994 and the order dated 13.2.1995 passed under Section 7B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("the 1952 Act").

4. The contention of the petitioner is that Statute 92 in relation to the University Employees' Provident Fund is relevant for deciding the issue. The said Statute has been framed under the 1972 Statutes. Under Section 49(b) the petitioner Marathwada Agricultural University, presently known as the Vasantrao Naik Marathwada Agricultural University, has formed a special fund by the name University Employees Provident Fund under the Ordinances of 1972. It has been established with the object of crediting the accumulated balances of the Government Provident Fund of the Government servants, University Provident Funds of the employees of the Punjabrao Krishi Vidyapeeth, taken over and absorbed in the services of the petitioner University.

5. It is, therefore, submitted that the petitioner University would stand excluded under Section 16(1)(c) of the 1952 Act. The petitioner University is depositing the PF contributions in the University Employees' Provident Fund. Hence the impugned notices and the impugned orders deserve to be set aside as the authorities, which have passed the impugned orders and issued the impugned notices, are not empowered to do so. The petitioner University cannot be compelled to make provident fund contributions under

the University Employees Provident Fund as well as before the authorities under the 1952 Act.

6. Grievance is that these aspects have not been considered by the competent authorities at the time of passing orders under Section 7A and under Section 14B and also while issuing notices, which are impugned in this petition.

7. The petitioners draw the attention of this Court to an order dated 2.12.1998, passed by the Divisional Provident Fund Commissioner (SRO) Nagpur in the matter of Section 7A proceedings with regard to the Punjabrao Krishi Vidyapeeth at Akola, which was allotted PF Code No. MH-61423. By adverting to the said order, Shri Navandar submits that the competent authority has considered the fact situation with regard to the Punjabrao Krishi Vidyapeeth, which is not different from the fact situation of the petitioner University and has specifically passed an order taking into account the statutes and regulations applicable, thereby, concluding that the said Agricultural University is excluded from the applicability of the provisions of the 1952 Act.

8. The petitioners have then drawn my attention to a communication dated 14.3.1982, issued to all State Governments / Union Territories (except Jammu and Kashmir) that the provisions of the 1952 Act should not be made applicable to such educational institutions and Universities, which provide for the provident fund of the employees and necessary provident

fund schemes are in operation.

9. Shri Nawandar submits that the University Employees Provident Fund has been formed with regard to the petitioner University. It is, therefore, submitted that the impugned notices and orders be quashed and set aside and either this Court may order exemption under Section 16(1)(c) in favour of the petitioner or necessary orders be issued to the competent authority to consider this issue and pass an appropriate order.

10. Shri Chaudhary, learned Advocate, on behalf of respondent No.2 and Shri Deshpande learned ASG on behalf of respondent No.1 with the AGP on behalf of respondent No.3, have prayed for the dismissal of this petition. It is submitted that the PF authorities have considered the evasion of provident fund contribution by the petitioner University in relation to the temporary / daily wage employees. Such employees are not benefited by the University Employees' Provident Fund. Since these employees have been unable to raise any grievance and since they are unorganized, the petitioners are evading PF contribution with regard to such employees.

11. I have considered the submissions of the learned Advocates as are recorded herein-above.

12. The petitioners have made a categoric statement that the Universities Employees Provident Fund has been established and PF contribution of the University employees as a whole has been deposited in

the said fund. It is, therefore, submitted that the University deserves to be exempted from the applicability of the 1952 Act.

13. Section 16 of the 1952 Act reads as under:-

*"16. **Act not to apply to certain establishments** - (1) This Act shall not apply –*

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient to do so, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the notification, exempt whether

prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification."

14. Section 37 under Chapter VI of the Maharashtra Agricultural Universities Act, 1983 and its Statutes of 1990 is relevant in this case. Section 37(5), which is material for deciding this case, reads as under:-

*" **Section 37 - Statutes**. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:- ....*

(f) the institution of pension or provident fund or insurance scheme, or all or any one or more of them, for the benefit of employees of the University;..................."

15. Statute 123 of the Statutes of 1990, which deals with the University Employees Provident Funds reads as under:-

*" **Statute 123. University Employees Provident Fund**.—In accordance with the provisions of sub-clause (/) of section 37 of the Act and the provisions made else where in the Act and the Statutes in this behalf, the provision Maharashtra General Provident Fund Rules, 1985 (as amended and added from time to time) applicable to the State Government Employees, shall be applicable mutatis-mutandis to the employees of the University, affiliated colleges and recognised institutions, other than those recognised for Research and Specialised higher learning.*

The receipts on account of contributions by the employees of the University in the General Provident Fund should be transferred to the State Government in accordance with the orders/instructions *issued by the State Government.*

The maintenance of individual accounts, settlement of claims on account of advances, their repayments, final withdrawals, as per General Provident fund Rules, will have to be done by the University in accordance with the Orders/instructions issued by the State Government from time to time. "

16. It is apparent that the University Statutes have prescribed the formation of the University Employees Provident Fund. Statement of the petitioners is recorded that there exists such a fund. In similar circumstances, the Punjabrao Agricultural University had taken a stand of exemption under Section 16 to the Regional Provident Fund Commissioner, SRO, Nagpur and by order dated 2.12.1998 such exemption has been granted on similar grounds to the said University.

17. The communication issued by the Government of India, Ministry of Labour and Rehabilitation, dated 14.3.1983, is in the form of a directive on the basis of a notification dated 19.2.1982 that those Universities and educational institutions could be excluded from the provisions of the 1952 Act under Section 16 if they are providing provident fund and pension to their employees.

18. Considering the above, it is apparent that the petitioners are entitled for exemption / exclusion under Section 16 of the 1952 Act. It is stated that such order can be passed only by the Regional Provident Fund Commissioner at Nagpur and no other authorities has been delegated such

powers, as per the learned Advocates for the respondents.

19. In this backdrop, I am inclined to allow this petition and permit the petitioners to make an application for exemption / exclusion under Section 16 of the 1952 Act before the competent authority, which shall pass necessary order of exclusion only after considering the fact situation as above. It be noted that the said authority shall verify for itself whether the University Employees Provident Fund has been established under the old Statutes of 1972 and continued under the new Statutes of 1990, applicable to the petitioner University before passing the order of granting exemption / exclusion. The competent authority shall look into the aspect of grievance of non payment of provident fund contribution as regards daily wagers / temporary and contractual employees, deployed with the petitioners.

20. In the light of the above, the impugned notices and orders as set out in the prayer clauses and which are, (1) notices dated 16.5.1994 and 2.8.1994, (2) order dated 7.9.1994 passed under Section 7A, (3) order dated 5.12.1994, (4) notice dated 5.12.1994 and (5) order dated 13.2.1995 passed under Section 7B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 are quashed and set aside.

21. The petitioners shall make an appropriate application and support the same with proper documents, which shall be filed before the competent authority for seeking exemption / exclusion under Section 16(1)(c) of the

1952 Act, within a period of eight weeks from today. The petitioners shall participate in the hearing before the competent authority on the said application and shall cooperate in making available such records as may be ordered by the competent authority.

22. Needless to state, in the event, the competent authority arrives at a conclusion that the University Employees Provident Fund is not existing or is not being operated, it may accordingly, pass appropriate orders inasmuch as shall consider recovery of outstanding PF contributions which were subject matter of the impugned notices. In this situation, the impugned notices and the orders shall stand restored.

23. This petition is therefore, partly allowed and Rule is made partly absolute in the above terms.

24. In view of the disposal of the main petition, Civil Application No. 7580 of 2014 does not survive and accordingly stands disposed off.

(RAVINDRA V. GHUGE, J.)

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