kps

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 561 OF 2015

M/s Ambejogai Peoples Cooperative Bank Ltd.,
A Bank registered under the Maharashtra
Cooperative Societies Act, 1960, having it's
registered office at Sahakar Bhavan,
Prashantnagar, Ambajogai,
District Beed. M.S..
Through it's CEO/ Authorized Signatory
Shri Prashant s/o Pralhadrao Shinde,
Age : 43 years, Occ : Service,
R/o Aurangabad.

...PETITIONER

-VERSUS-

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office at CIDCO, Aurangabad,
Tq. & District Aurangabad.

...RESPONDENT

...

Advocate for Petitioner : Shri Vidwauns Sagar S.
Advocate for Respondent : Shri Chaudhary K.B.

...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 23rd October, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner has challenged the order dated 15.07.2014 passed by the Respondent under Section 7Q and Section 14B of the

Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short “the PF Act, 1952”).

3 It is stated that the Petitioner is a cooperative society which is covered under the PF Act, 1952 as per Section 16(1)(a) only after it engages 50 workers or more. The Petitioner is stated to have commenced it’s business activities in June, 1996.

4 The Petitioner has tendered across the Bar a communication dated 16.04.2015 addressed by the Enforcement Officer, Aurangabad Circle, Beed to the Respondent Authority. The same is taken on record and marked as Exhibit X for identification.

5 The Petitioner, therefore, submits that this report submitted by the Enforcement Officer indicates that for the first time the Petitioner engaged 42 employees and had 08 pigmy agents in September, 2008 and hence, total number of employees touched 50 for the first time in September, 2008. The PF Act, 1952 would, therefore, cover the Petitioner only from 2008.

6 Shri Vidwauns, learned Advocate for the Petitioner, hastens to add that the contention of the Petitioner is that number of it’s employees

touched 50 only for the first time in December, 2010 and hence, the PF Act, 1952 can be said to have become applicable from December, 2010 only.

7 He, therefore, submits that the Petitioner can be relegated to Respondent/ Authority for considering the above position and for deciding the applications pending before the said Authority filed by the Petitioner calling upon the Respondent Authority to decide the date of applicability of the PF Act, 1952 in the light of the strength of employees and Section 16(1)(a).

8 Shri Chaudhari, learned Advocate for the Respondent/ Authorities, has strenuously opposed this petition. He submits that the impugned order dated 15.07.2014 under Sections 7Q and 14B cannot be faulted. The assessment has been correctly arrived at by the Respondent Authorities in the impugned order and hence, no interference is called for.

9 I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

10 It cannot be disputed that the issue of applicability of the PF Act, 1952 in the light of the applications filed by the Petitioner and

Section 16(1)(a) has not been decided by the Respondent Authority. The impugned order only indicates that the Petitioner has disputed the applicability of the PF Act, 1952 and the Respondent has applied his mind to the facts and circumstances of the case. There is no adjudication on the issue raised by the Petitioner in the light of Section 16(1)(a) as to when the PF Act, 1952 could be said to be applicable to the Petitioner/ Establishment.

11 Pursuant to the orders passed by this Court, an amount of Rs.15 lac has been deposited by the Petitioner in this Court on 16.02.2015.

12 In the light of the above and considering the report Exhibit X, this petition is partly allowed. The impugned order dated 15.07.2014 is quashed and set aside. The proceedings bearing No.MH/AB/84290/PF/PD Cir.505/SRO/2014/2967 are remitted back to the Respondent by directing the Petitioner to appear before the said Authority on 16.11.2015 and thereafter, abide by the dates of hearing as may be granted by the Respondent Authority.

13 Needless to state, the Respondent shall first decide the applicability of the PF Act, 1952 in the light of Section 16(1)(a) and

considering the report of the Enforcement Officer Exhibit X as well as the contention of the Petitioner that the PF Act, 1952 became applicable in December, 2010.

14 Thereafter, the Respondent shall decide the proceedings under Section 14B r/w 7Q from the date of applicability of the PF Act, 1952 on it's own merits.

15 The amount of Rs.15 lac deposited by the Petitioner shall be transmitted by the Registry of this Court to the Respondent along with accrued interest within a period of EIGHT WEEKS from today.

17 Naturally, the Respondent after deciding the proceedings shall assess the amount recoverable and in the event, the amount so transferred is more than the assessed amount, the excess amount shall be returned to the Petitioner. In the event, the Petitioner is held liable to pay the dues beyond the amount so transmitted, the Respondent shall issue necessary directions in that regard.

18 Rule is made partly absolute in the above terms.

(**RAVINDRA V. GHUGE, J.**)