

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12354 OF 2015

M/S DR ZAKIR HUSAIN JUNOR COLLEGE OF EDUCATION THROUGH
ITS PRINCIPAL SHAIKH HASEE

VERSUS

THE REGIONAL PROVIDENT FUND COMMISSIONER II AURANGABAD

...

Advocate for Petitioner : Shri Shinde Manoj D.

Advocate for Respondents : Shri K.B.Chaudhari.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd December, 2015

Per Court:

1 The Petitioner is aggrieved by the order dated 07.12.2015 passed by the Respondent Authority under Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

2 Shri Shinde, learned Advocate for the Petitioner, points out the notice dated 05.10.2015 by which the Respondents had specifically directed the Petitioner to appear on 14.10.2015 before the concerned Authority and explain as to why an order under Section 7Q granting interest on delayed provident fund payment for the period 01.11.2013 to 30.09.2015 should not be passed against the Petitioner.

3 Shri Shinde submits that on 14.10.2015, the Principal of the Petitioner College himself appeared before the concerned Authority and

sought time. On 28.10.2015, he submitted his reply and did not object to the revised statement of dues under Section 14B and Section 7Q. By the consent of the Principal, the matter was closed for orders.

4 The grievance voiced by Shri Shinde is apparent from the internal page 3 of the impugned order wherein, on the one hand, the Petitioner has been charged with interest under Section 7Q for an amount of Rs.946/- only, for the period 01.11.2013 to 30.09.2015. On the other hand, interest under Section 7Q for the period June, 2004 till September, 2013 for an amount of Rs.67,675/- is sought to be recovered from the Petitioner, without any notice.

5 Shri Shinde submits that no show cause notice, opportunity of hearing or fair hearing was rendered with regard to the claim of interest under Section 7Q for the period June, 2004 till September, 2013.

6 Shri Chaudhari, learned Advocate appearing on Advocate's notice on behalf of the Respondent / Provident Fund Authority, strenuously opposes this petition and prays that the same be dismissed. He submits that unless a notice is issued, no order under Section 7Q is passed by the Respondent Authority since the principle of natural justice requires a hearing. It is possible that the Petitioner may have ignored the earlier

notice for the said period. Nevertheless, he submits that the entire amount deserves to be deposited by the Petitioner in this Court if this petition is to be heard.

7 I have considered the submissions of the learned Advocates as recorded herein above.

8 There is no dispute that by notice dated 05.10.2015 the Petitioner was heard on Section 7Q for the period 01.11.2013 to 30.09.2015. The explanation was put forth by the Petitioner on the said count. An amount of Rs.946/- only is, therefore, payable by the Petitioner under Section 7Q.

9 Ends of justice would be met if the Respondent Authority is directed to hear the Petitioner on Section 7Q for the period June, 2004 till September, 2013 by issuing a proper notice, in the event such notice has not been so issued. If such notice was already issued, the Petitioner can address the mind of the Respondent Authority and the Respondent, thereafter, would be at liberty to pass a reasoned order under Section 7Q. Needless to state, if the proceedings under Section 7Q for the said period have already been closed, the Respondent can pass a necessary order to that effect.

10 In the light of the above, this petition is partly allowed. There shall be no interference with the impugned order dated 07.12.2015 to the extent of recovery of Rs.946/- under Section 7Q for the period 01.11.2013 to 30.09.2015. The said issue, therefore, stands closed.

11 However, the Petitioner shall deposit an amount of Rs.25,946/- with the Respondent Authority on or before 16.01.2016. The Petitioner shall appear before the Respondent on the same day 16.01.2016. The Respondent shall hear the Petitioner on Section 7Q for the period June, 2004 to September, 2013 afresh. The Respondent Authority shall give a fair opportunity of hearing to the Petitioner and after the proceedings are concluded, shall proceed to pass a reasoned order with regard to Section 7Q for the said period.

12 Needless to state, if the proceedings under Section 7Q for this period have already been closed, the Respondent Authority shall accordingly, pass necessary order and refund the excess amount to the Petitioner without interest, expeditiously and within a period of SIX WEEKS from the date of closing of the proceedings.