

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4640 OF 1994

Institute of Management,
Training and Research, 'Srinath',
2nd floor, Khadkeshwar, Mill Corner,
Post Box No.87, Aurangabad,
Dist.Aurangabad,
Through its Director
Dr.Laxmikant S/o Jankirampant Ahirwadkar -- PETITIONER

VERSUS

1. The Officer Incharge,
Sub-Regional Office, Aurangabad,
Employees Provident Fund
Organization, Sub-Regional Office,
Plot No.2, Bhavishya Nidhi Bhavan,
Town Centre, Commercial Area,
CIDCO, New Aurangabad,
Aurangabad

2. The Union of India -- RESPONDENTS

Mr.S.V.Natu, Advocate for the petitioner.
Mr.K.B.Chaudhary, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/09/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the letter dated 30/06/1994 issued by the respondent/Provident Fund Authority, by which the Employee's Provident Funds and Misc. Provisions Act, 1952 has been

made applicable to the petitioner/Establishment and has been allotted a Code Number. In short, the petitioner is aggrieved by its coverage under the Employee's Provident Funds and Misc. Provisions Act, 1952.

2. The specific contention of the petitioner is that 12 persons mentioned in Annexure A at page No.10 of the petition paper book are the actual employees of the petitioner. 22 persons mentioned in the list Annexure B at page Nos.11 and 12 are the contributory faculty members, who are senior officers of various organizations like M/s Wockhardt Limited, CEAT limited, M/s Universal Luggage Manufacturing Company, Videocon International Limited, Bajaj Auto Limited, M/s Aurangabad Motors Manufacturing Limited, M/s Forbes and Forbes Forbes Campbell and Lecturers and Teachers from the Aurangabad University, SB College of Science, Maulana Azad College and Marathwada Institute of Technology. They being the employees of said companies/Institutions, the honorarium paid to them was in total of recognizing their assistance rendered for imparting knowledge and education. By no stretch of imagination, they could be held to be the employees of the petitioner.

3. Mr.Choudhary, learned Advocate for the respondents has

strenuously supported the impugned order.

4. Having considered the submissions of the learned Advocates, I am of the view that the employees of other companies and institutions, who deliver lectures in various courses in the petitioner/Institution, cannot be termed as being employees of the petitioner/Institution since there cannot be two employers of a single individual. This aspect should have been considered by the respondents before issuing the impugned letter concluding that the petitioner is covered under the Act of 1952. There is no dispute that unless the regular employees of an Establishment are 20 or more, the Act of 1952 would not be applicable to such an establishment.

5. It is stated that presently, the petitioner has two full time employees and about 4 such visiting faculty who deliver lectures for imparting education under various courses at the petitioner/Institute. In this backdrop, the ends of justice would be met by keeping the order dated 30/06/1994 in abeyance and by enabling the respondents/authorities to consider the contentions of the petitioner strictly within the purview of the Act of 1952 and keeping in view the observations of this Court set out hereinabove.

6. In the light of the above, this petition is partly allowed. The impugned order dated 30/06/1994 shall be kept in abeyance subject to the following directions :-

- [a] Respondent No.1 shall issue a notice of hearing to the petitioner by giving reasonable opportunity for appearance and hearing on the following address :-
Institute of Management, Training and Research,
Plot No.P-4, Near Bajaj Bhavan (CMIA) Office,
MIDC Office Road,
MIDC Railway Station Industrial Area,
Aurangabad.
- [b] The contentions of the petitioner recorded in this order shall be considered by respondent No.1 after conducting a hearing on the issue as to whether the Employees Provident Funds and Misc. Provisions Act, 1952 would be applicable to the petitioner or not.
- [c] After the conclusion of the hearing, respondent No.1 shall pass a reasoned order and shall serve the same on the petitioner.
- [d] Needless to state, if respondent No.1 arrives at a conclusion that the Act of 1952 is not applicable to the petitioner, the impugned order dated 30/06/1994 shall stand withdrawn.
- [e] In the event it concludes that the Act is applicable, the petitioner shall be at liberty to participate in the further proceedings pursuant to the order dated 30/06/1994 by producing relevant documents as it may deem fit and proper.
- [f] In the event, the petitioner is aggrieved by the said order, it shall be at liberty to seek redressal of its grievance in the manner as may be provided under Law.

7. Rule is made partly absolute in the above terms.
8. Pending civil applications, if any, do not survive and stand disposed of.

(RAVINDRA V. GHUGE, J.)