IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4512 OF 2011

The Principal,
Shri Bankatlal Lahoti English School,
At & Post Latur 413 512,
Dist. Latur.
...Petitioner...

Versus

1 The State of Maharashtra.

2 Assistant Provident Fund Commissioner, SRO Employees Provident Fund Organisation, 165, Railway Lines, Solapur - 413 001.
...Respondents...

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Mrs. Anjali (Bajpai) Dube, Advocate for petitioner.
Shri V.S. Badakh, AGP for respondent no.1.
Shri K.B. Chaudhari, Advocate for respondent no.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 22.02.2016

ORAL JUDGMENT :

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

2] The petitioner is aggrieved by the order dated 25.9.2010 delivered by the Employees Provident Fund Appellate Tribunal, New Delhi, by which the appeal ATA No.298 (9) / 2004 filed by the petitioner has been dismissed.

3] The petitioner has deposited 75% of the assessed amount u/s 14-B and Section 7-Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 with respondent no.2 while preferring the appeal before the Appellate Tribunal.

4] Pursuant to the order passed by this Court dated 28.6.2012, the petitioner has deposited an amount of Rs.1,13,461/- on 2.9.2012 in this Court. As such, the entire amount has been deposited by the petitioner.

5] I have heard Mrs.Dube, learned Advocate for the petitioner and Shri K.B. Chaudhari, learned Advocate appearing on behalf of respondent no.2 at length.

6] The petitioner had preferred an appeal u/s 7-I of the 1952 Act before the Appellate Tribunal. The grounds for appeal / challenge are evident from paragraph no.2 onwards. By setting out its grounds for appeal, the petitioner had sought the quashing and setting aside of the order dated 16.3.2003 passed by respondent no.2 u/s 7-Q of the 1952 Act.

7] Shri Chaudhari has strenuously supported the impugned order and prays for dismissal of the petition.

8] I find that the petitioner had specifically raised an issue of excess payment with regard to those employees, who had already left the employment. The 1952 Act was made applicable to the petitioner – establishment in 1993, but with effect from 1988. Naturally, Sections 14-B and 7-Q were made applicable for seeking recovery of interest and damages.

9] When the petitioner had specifically raised the contention of an excess payment having been made inadvertently in relation to those employees, who had already left employment, the Appellate Tribunal should have considered the said grounds in appeal and should have dealt with those grounds with a reasoned order.

10] I have gone through the impugned order. Neither has the Appellate Tribunal referred to the grounds for appeal / contentions set out by the petitioner in the appeal memo, nor has the Tribunal dealt with the aspect of excess payment, which issue has been consistently raised by the petitioner. I do not find that the Tribunal has properly considered the appeal while delivering the impugned judgment.

11] In the light of the above, this petition is partly allowed. The impugned order dated 25.9.2010 delivered by the Employees Provident Fund Appellate Tribunal, New Delhi, is quashed and set aside. The appeal ATA No.298 (9) / 2004 is remitted back to the Appellate Tribunal for a fresh hearing and adjudication.

12] All the litigating sides shall appear before the Appellate Tribunal at New Delhi on 21.3.2016 at 11-00 a.m. Formal notices need not be issued by the Appellate Tribunal to the litigating sides.

13] Needless to state, the Appellate Tribunal shall consider all the contentions / grounds for appeal put forth by the petitioner and shall decide the appeal on its own merits by delivering a reasoned judgment.

14] The amount deposited by the petitioner in this Court on 2.9.2012 shall be transmitted to respondent no.2 - Assistant Provident Fund Commissioner, Solapur, alongwith accrued interest. Since the entire amount has been deposited by the petitioner, the Appellate Tribunal shall proceed to consider the appeal of the petitioner on its own merits. The amount deposited alongwith interest shall be subject to the result of the appeal.

15] Needless to state, the petitioner shall abide by the dates of hearing on which the matter would be posted by the Appellate Tribunal after the date of appearance of the parties on 21.3.2016.

16] Since the appeal has been lodged in the year 2014, it is expected that the Appellate Tribunal shall decide the appeal as expeditiously as possible and preferably on or before the 30th day of September, 2016.

17] Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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