IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3701 OF 2012

The Janlaxmi Co-operative Bank Ltd.,
Office at Samruddhi, Gadkari Chawl,
Old Agra Road, Nashik – 422 007. ... Petitioner

v/s

1 Employees Provident Fund Organization,
Sub-Regional Office, Nashik,
PlotNo.11, Bhivishya Nidhi Bhavan,
MIDC, Satpur, Nashik 422 007.

2 The Regional Provident Fund
Commissioner-II and office in-charge
Sub-Regional office Nashik,
Plot No.P-11, Bhavisya Nidhi Bhavan,
MIDC, Satpur, Nashik – 422 007. ... Respondents.

WITH
WRIT PETITION NO. 2057 OF 2013

The Nasik District Central Co-operative
Bank Ltd., Nasik,
Office at Mumbai-Agra Mahamarg,
Near Dwarka Circle, Nasik – 422 001. ... Petitioner

V/s

1. Employees Provident Fund Organization,
Sub-Regional Office,
Plot No.P-11, Bhavisya Nidhi Bhavan,
MIDC, Satpur, Nashik – 422 007.

2 Regional Provident Fund Commissioner,

Office at Plot No.P11, Bhavishya Nidhi
Bhawan, MIDC Stapur, Nashik 422 007. … Respondents

WITH
WRIT PETITION NO. 9634 OF 2011

The Nashik Merchant Co-operative Bank Ltd.,
Office at Plot No.A-16, Babubhai Rathi Chowk,
Satpur MIDC, Nashik – 422 007. ... Petitioner

V/s

1. The Regional Provident Commissioner-II
and office in-charge
Sub-Regional office Nashik,
Plot No.P-11, Bhavisya Nidhi Bhavan,
MIDC, Satpur, Nashik – 422 007.

2 The Presiding Officer,
Employees Provident Fund Appellate
Tribunal, 4th floor, Core 2 SCOPE Minar,
Laxmi Nagar, Delhi – 110 092. ... Respondents.

WITH
WRIT PETITION ST. NO. 28401 OF 2013

The Nashik District Girna Sahakari Bank
Ltd., through Chief Executive Officer,
Office at Administrative Krishi Utpanna
Bazar Samitee, Dindori Naka,
Panchavati, Nashik. ... Petitioner

V/s

1. Employees Provident Fund Organization,
Sub-Regional Office,
Plot No.P-11, Bhavisya Nidhi Bhavan,
MIDC, Satpur, Nashik – 422 007.

2 Regional Provident Fund Commissioner,
Office at Plot No.P11, Bhavishya Nidhi
Bhawan, MIDC Stapur, Nashik 422 007. … Respondents

Mr.A.K. Jalisatgi for the Petitioner in W.P. No.3701/12.

Mr.A.V. Bukhari, Senior Advocate along with B.V. Bukhari for the Petitioner in W.P.No.2057/13.

Mr. P.M. Palshikar for the Petitioner in W.P. No.9634/11.

Mr. K.S. Bapat i/b. Vishal Tambat for the Petitioner in W.P. (St.) No.28401/13.

Mr.Suresh Kumar along with Ms.Sangeeta Yadav i/by for the Respondents in all petitions.

CORAM: N.M. JAMDAR, J.

DATED : 16 FEBRUARY 2016

ORAL ORDER:

In this group of matters, common question sought to be raised by the Petitioners is, whether Pigmy Deposit Collectors employed by the Petitioners - Banks are entitled for the protection of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

2 Petitioner in Writ Petition No. 9634 of 2011 has challenged the final order passed by the Employees Fund Appellate Tribunal. The other Petitioners have approached this Court while their proceedings before the Provident Fund Authorities are pending. Since the Petitioners have raised a common issue of law,

the Petitions have been clubbed together by orders passed by this Court.

3 While these Petitions were pending and ad-interim orders were granted in favour of the Petitioners, the issue regarding Pigmy Deposit Collectors arose for consideration before the Division Bench of this Court in ***The Pachora Peoples' Co-op. Bank Ltd. v/s The Employees Provident Fund Organization (Ministry of Labour, Govt. of India),*** rendered in **Writ Petition No.5086 of 2011 (Aurangabad Bench).** The Division Bench disposed of the writ petition by judgment and order dated 7 February 2014. Before the Division Bench, submissions advanced, are reflected from paragraph 3 of the decision:

> *3. (i) The petitioner is a Co. Operative Bank registered under the provisions of The Co-operative Societies Act, 1960 and the rules framed thereunder.*
>
> *(ii) The petitioner is covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.*
>
> *(iii) The business of the petitioner Bank increased every passing day and became a renowned Bank in the Jalgaon District.*
>
> *(iv) The Enforcement Officer working under the A.P.F.C. submitted his report dated 5.3.2010 and the A.P.F.C. initiated an inquiry under section 7A with regard to non-payment/deposition of Provident Fund subscription in connection with the Pigmy Deposit Collectors.*
>
> *(v) The petitioner challenged the 7A enquiry by filing*

W.P.No.8568/2009 before the Bombay High Court, which came to be dismissed as withdrawn on 16.12.2009.

(vi) The petitioner had contended before the A.P.F.C. that the Pigmy Deposit Collectors were not covered by the definition of 'employee' u/s. 2(f) of the E.P.F. Act and that they were not earning wages as basic wages from the petitioner under section 2(b) of the said Act.

(vii) It was also contended that they are commission agents and not the employees of the petitioner.

(viii) The A.P.F.C., after concluding the enquiry in accordance with the procedure laid down in Law under section 7A, delivered the impugned order dated 28.9.2010 concluding/assessing the outstanding provident fund dues in respect of the Pigmy Deposit Collectors at an amount of Rs.8,37,745/- .

(ix) Being aggrieved by the impugned order dated 28.9.2010, the petitioner preferred an appeal A.T.A. 727(9) of 2010 before the respondent at New Delhi.

(x) Under orders of the respondent dated 9.12.2010, the petitioner deposited 40% of the assessed amount.

(xi) All the points/grounds raised and agitated before the A.P.F.C. were canvassed before the respondent Tribunal.

(xii) By the impugned order dated 20.5.2011, respondent Tribunal upheld the findings of the A.P.F.C. and rejected the appeal of the petitioner.

(xiii) The grounds for challenge and points urged before both the Authorities are set out by the petitioner in this petition.

(xiv) The petitioner, therefore, prays that the petition be allowed.'

4 The Division Bench considered the rival contentions and also the decision of the Apex Court in the case of ***Indian Bank Association v/s Workmen of Syndicate Bank*[1]*.*** The Division Bench concluded the issue as under :

> '*7. We quite appreciate that the Pigmy Deposit Collectors, not only have to make regular visits to small depositors like traders, housewives, students, self-employed persons etc., but these visits are prompted owing to the requirement of collecting their deposits. This obviously is in tune with and traceable to the business of the petitioner bank. This is a manual nature of work and the collections have to be made by going from places to places and visiting persons to persons. Various forms have to be filled in, accounts, registers and passbooks are required to be maintained and updated on day to day basis and the said amounts received have to be deposited with the petitioner bank. The commission to be paid to the said collectors is linked with the quantum of the collection. This is ultimately traceable to the business of the bank and is connected with the generation of funds for the bank.*
>
> *8. The definition of 'wages' u/s 2(rr) of The Industrial Disputes Act, 1947, in our opinion and on the basis of the view taken by the Hon'ble Supreme Court , squarely covers such Pigmy Deposit Collectors. Needless to state, these collectors are answerable and accountable to the petitioner bank. In the event, the Bank is not satisfied with the performance of any such collector, it entitles the Bank to delete such collector from its list and allot no work to him.*
>
> *9. As such, in our opinion, though the degree of supervision, control and direction may differ from what is commonly emanating from the public and private industrial sector, we intend to give a wider meaning to the principle of*

1 2001 (1) CLR 385 (SC)

> *"Employer – Employee" in connection with such Pigmy Deposit collectors.*
>
> *10. In such a situation, it is immaterial as regards the work hours / duty hours allotted to such collectors. In fact, their nature of duties and job profile is more arduous as has been held in the Indian Bank Association's Case (supra), it would be impossible to fix working hours for such collectors as their nature of work leaves them at liberty to regulate their own hours of work. By no stretch of imagination, can they therefore be held to be not covered by the principle of "Employer – Employee".*
>
> *11. In the light of the above, we are of the considered view that the said issue of Pigmy Deposit Collectors is no longer res-integra. As such, we are not required to adopt a different view at the instance of the petitioner. Since the Law on this point is now well settled, the petition fails and deserves to be dismissed.*'

The Division Bench thus held that the Pigmy Deposit Collectors/ Agents are entitled to the protection of the Act of 1952.

5 Learned counsel for the parties submitted that the decision of the Division Bench does not notice various statutory provisions and also the reliance placed by the Division Bench on the decision of the Apex Court in *Indian Bank Association* is misplaced as it did not arise from proceedings under the Act of 1952. Learned counsel for the parties urged that a reference should be made under Rule 7 Chapter 1 of the Bombay High Court Appellate Side Rules, 1960, to constitute a larger Bench. Reliance is placed on the decision of learned Single Judge of this Court (R.G.Ketkar, J.), in the case of

Ashok Gangadhar Shedge & ors. v/s Ramesh Gangadhar Shedge & ors.[2]***,*** wherein such course of action was adopted.

6 Primarily two grounds are pressed in aid of their request. Firstly, that the decision has placed heavy reliance on the dicta of the Apex Court in the case of *Indian Banks Association*, in which case the Apex Court was considering the provisions of the Industrial Disputes Act and the definition of 'wages' contained in Section 2(rr) of the Industrial Disputes Act and not the definition wages in the Act of 1952. It was contended that, under the Industrial Disputes Act, the definition of wages includes any commission payable on the promotion of sales or business or both. The learned counsel submitted that, however, the position is to the contrary under the Act of 1952, wherein basic wages have been defined to exclude the commission. It was contended that the Division Bench of Karnataka High Court in the case of ***Asstt. Provident Fund Commissioner v/s The South Kanara Govt. Officers' Co-op. Bank Ltd. & anr.***, rendered in ***Writ Petition No.6081 of 2001, dated 12 January 2005,*** has taken a view that the Pigmy Deposit Collectors are not covered by the provisions of the Act. It was contended that Special Leave Petition against this decision has also been dismissed. Reliance was also placed on the decision in the case of ***Tribhovandas Purshottamdas Thakkar v/s Ratilal Motilal Patel & ors.***,[3] to contend that if the Single Judge notices a decision of another High Court, which is strongly persuasive and takes a

2 2014 (4) Bom.C.R. 797.
3 A.I.R. 1968 SC 372.

different view which prevail in his High Court, Single Judge is not precluded from making a reference for constitution of larger Bench.

7 On the other hand, learned counsel for the Respondent Authority submitted that the Division Bench has concluded the issue as to the employer-employee relationship between the banks and the Pigmy Deposit Collectors and once that position of law is settled, then, on the perverted interpretation of Section 2(b) of the Act of 1952, protection given to such employees cannot be withdrawn. He submitted that the interpretation advanced by the counsel for the Petitioners will defeat the beneficial provision of the Act.

8 I have considered the rival contentions.

9 Firstly, the Division Bench decision holding that there is an employer-employee relationship between the banks and Pigmy Agents is binding on me as a Single Judge. Very question arose for consideration and is answered. That there exists a power to make a reference to the larger Bench under the Rules is not disputed, but as a matter of judicial discipline, it should a rare circumstance. These are two situations. First, is of Single Judge noting difference of opinion between two Division Benches, which cannot be reconciled. In such circumstances, reference to constitute a larger Bench generally follows. Other situation is that the Single Judge finds that the decision of the Division Bench is not correct and requires reconsideration. This cannot be in routine course. Only if

the Single Judge is satisfied that a very strong case is made out for reconsideration, and that there is no other option but to make reference, that he may proceed to do so. Merely because the Single Judge feels that some points were not correctly construed by the Division Bench, is not enough to straight away make a reference to the larger Bench. It needs to be seen whether such request is just delaying tactics to avoid the inevitable results and extend the interim orders, or is a genuine request for settling a position of law, which if not corrected, will lead to serious consequences.

10 In the case of ***Official Liquidator v/s. Dayanand and ors***.[4] the Apex Court has underlined the need to maintain judicial discipline. Apex Court observed as under :

> '*90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basic of judicial discipline,. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to*

4 (2008) 10 SCC 1

> *which of the judgments lay down the correct law and which one should be followed.*'

11 As regard the contention that the Division Bench has incorrectly relied upon the decision in the case of *Indian Bank Association* is concerned, it has to be noted that, for the purpose of arriving at employer-employee relationship, the Division Bench has given its own reasoning in paragraph 7. It has held that the work carried out by the said Pigmy Deposit Collectors is traceable to the business of the bank and connected with accrual of revenue for the bank. Therefore, even though the decision in the case of *Indian Bank Association* arose from provisions of Industrial Disputes Act, the Division Bench has applied the test of control and supervision to ascertain the existence of employer-employee relationship in the present case. It cannot be said that the Division Bench was not aware that the decision of the *Indian Bank Association* arose from proceedings under the Industrial Disputes Act.

12 Main contention that is advanced is regarding the difference in definition in respect of wages in the Industrial Disputes Act and the Act of 1952. It is contended that, while the Industrial Disputes Act includes the "commission", the Act of 1952 excludes the same. Nothing much turns on this distinction sought to be made. Once the decision of the Division Bench holding that there is employer-employee relationship with the banks and Pigmy Deposit Collectors, then the question is of the character of the payment made to the said collectors. Act of 1952 defines basic wages as

under :

> *“2(b) 'basic wages' means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include - (i) the cash value of any food concession; (ii) any dearness allowance (that is to say), all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment.'*

The basic wages have been defined as of “emoluments” which are payable to an employee on duty. Once a Pigmy Deposit Collector is held to be an employee, then whatever he receives from the employer, would be his “emoluments”. The word 'commission' referred to in Section 2(b)(ii) would take its colour from the categories preceding it. The Section therefore defines basic wages and excludes certain categories. These categories clearly indicates that there is an emolument to start with, but some payment will not be part of the emoluments for the purpose of calculating basic wages. In this case though word “commission” is used by the Petitioner, since the Pigmy Collectors are held to be employees, what they receive will be 'emoluments' and will not mean 'commission' even though the Petitioners use the said nomenclature. For certain categories to be excluded from 'emoluments', there has to be emoluments in first place. Since it is held that the Pigmy Collectors are employees of the banks, if the amount paid to them is styled as commission and sought to be removed from the ambit of the phrase 'basic wage', then such employee will be left with no 'emoluments' and cease to have any protection of the Act, as they receive nothing else. As rightly contended by the learned counsel for the Respondents that provisions of the Act are to be construed as a beneficial legislation. In such circumstances, the emoluments these agents receive cannot be treated as "commission" even though the Petitioner used this nomenclature.

13 Strong reliance was placed by the counsel for the Petitioners on the decision of the Apex Court in the case of ***Bridge & Roof Company (India) Ltd. & ors. v/s Union of India & ors.***,[5] to contend that commission and similar allowances are excluded. The Apex Court in the said decision was considering as to whether bonus is included in the definition of Basic Wage. The Apex Court was not called upon to consider the situation akin to the one at hand. The Apex Court was not considering whether an employee who is being paid emoluments which the employer styles as commission, would lose the protection of the Act.

14 Therefore, in my opinion, once the Division Bench has concluded the issue that there exists an employer-employee relationship, then the emoluments which are being paid to such Pigmy Deposit Collectors, would be covered under the definition of basic wage even though the petitioner banks have given it a

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5 1962(5) FLR 423 (SC).

nomenclature as commission.

15 In the circumstances, the petitions will have to be decided on the basis of the judgment of the Division Bench in the case of *Pachora Peoples' Co-op. Bank Ltd.*

16(a). WRIT PETITION NO. 9634 OF 2011:

The only contention advanced by the learned counsel for the Petitioners is that the authorities have incorrectly taken into consideration the Pigmy Deposit Collectors/Agents. As held above that this issue is concluded by the decision of the Division Bench in the case *Pachora Peoples' Co-op. Bank Ltd.,* there is no merit in this petition. The writ petition is rejected. The ad-interim order granted in this petition is continued for a period of six weeks from today.

(b) WRIT PETITION NO. 3701 OF 2012:

In this petition, challenge is raised to the orders passed by the Regional Provident Fund Commissioner directing the Petitioners to enroll all Pigmy Deposit Collectors as members under the Act of 1952. In view of what is held above, the challenge in the petition does not survive. The writ petition is rejected. The ad-interim relief granted in this petition to continue for a period of six weeks from today.

(c) WRIT PETITION NO. 2057 OF 2013:

This petition challenges the summons issued by the Assistant Provident Fund Commissioner to the Petitioners to appear under Section 7A of the Act of 1952, in the enquiry. The sole ground raised is regarding the issue of Pigmy Deposit Collectors, which is decided as above. In the circumstances, the writ petition is rejected. The ad-interim relief granted earlier to continue for a period of six weeks from today.

(d) WRIT PETITION (ST) NO. 28401 OF 2013:

This petition challenges the summons issued by the Assistant Provident Fund Commissioner to the Petitioners to appear under Section 7A of the Act of 1952, in the enquiry. The sole ground raised is regarding the issue of Pigmy Agents, which is decided as above. In the circumstances, the writ petition is rejected. The ad-interim relief granted earlier to continue for a period of six weeks from today.

(N. M. JAMDAR, J.)