

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

WRIT PETITION NO. 185 OF 2017

The Chief Executive Officer,
Parbhani District Central
Cooperative Bank Limited,
Parbhani.

...PETITIONER

-VERSUS-

Nathuji Shankarrao Bhakre,
Age : 58 years, Occupation : Nil,
R/o Vidya Nagar, Hingoli,
Taluka and District Hingoli.

...RESPONDENT

...
Advocate for Petitioner : Shri Joshi Sachin G.
Advocate for Respondent : Shri Kadu Shivraj B..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2017

Oral Judgment :

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

2 While issuing notice on 10.01.2017, I have noted the submissions of the Petitioner as under:-

"1 *The Petitioner is aggrieved by the order dated*

17.12.2016 by which the Petitioner's application dated 19.11.2016 praying for recalling "no-cross" order dated 27.09.2016, has been rejected.

- 2 The Petitioner informs that the Respondent has preferred Complaint (ULP) No.9/2015 before the Industrial Court under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 for seeking recovery of provident fund accumulations. Since an independent machinery and procedure is provided for claiming provident fund amounts under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the ULP complaint may not be maintainable.
- 3 Issue notice to the Respondent returnable on 15.02.2017.
- 4 On the condition that the Petitioner shall deposit Rs.10,000/- (Rupees Ten Thousand) in this Court on or before 25.01.2017, I am staying the impugned order as well as Complaint (ULP) No.9/2015 until further orders. The Industrial Court shall, therefore, refrain from proceeding with Complaint (ULP) No.9/2015.
- 5 If the amount as directed above is not deposited in this Court within the time frame, this ad-interim protection shall stand vacated without further reference to the Court.
- 6 The Petitioner shall supply the copy of the petition paper book on or before 13.01.2017 for issuance of notice, failing which this ad-interim protection shall stand vacated without further reference to the Court."

3 I have heard the learned Advocates for the respective sides.

4 There is no dispute that Complaint (ULP) No.9/2015 was filed under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 seeking recovery of provident fund accumulations as well as the suspension allowance.

5 There can be no dispute that insofar as the payment of provident fund contributions is concerned, the remedy is to approach the Authority under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. If the Respondent has been terminated on 09.12.1998, he would be entitled to the provident fund accumulations for which he can get the requisite forms, fill in the same, obtain the stamp and signature of the authorized representative of the employer and submit the said forms to the Provident Fund Authorities for calculating his provident fund accumulations and for disbursing the same. The said aspect cannot be gone into by the Industrial Court in a complaint of ULP much less under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

6 Considering the above, the Industrial Court, while dealing with Complaint (ULP) No.9/2015, cannot consider the prayer of the Respondent in relation to the claims falling under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. As observed above, the Respondent would be at liberty to fill in the requisite forms and after obtaining the signatures and stamps of the Petitioner Establishment, proceed to seek disbursement of the provident fund accumulations. The complaint filed by the Respondent would, therefore, be entertained only

to the extent of unpaid suspension allowance.

7 The Petitioner has assailed the order of the Industrial Court dated 17.12.2016 by which the application filed by the Petitioner seeking recalling of “no cross” order, has been rejected with a single sentence order i.e. *“Respondent and his Advocate absent, hence application stands rejected”*.

8 Though the learned Advocate for the Respondent has strenuously defended the impugned order, I do not find that the said order could be sustained. It is expected that judicial orders should be speaking orders and should contain reasons. The Respondent has in fact given it's say to the application running into five lines. The Industrial Court in a single sentence has rejected the application without assigning any reason.

9 “No cross” order was passed on 27.09.2016 and the application for recalling the said order was filed on 19.11.2016. In such matters, in order to ensure that a fair trial takes place and in the absence of inordinate delay, the Industrial Court should have adopted a pragmatic approach rather than a pedantic approach.

10 Considering the above, this Writ Petition is allowed. The

impugned order dated 17.12.2016 is quashed and set aside. The application dated 19.11.2016 is allowed on the condition that the Petitioner shall cross-examine the Respondent/ original Complainant on the next date approaching. No request for adjournment by the Petitioner would be entertained by the Industrial Court and the Petitioner shall cross-examine the Complainant without further delay.

11 The amount of Rs.10,000/- (Rupees Ten Thousand) deposited by the Petitioner in this Court on 25.01.2017 shall be withdrawn by the Respondent as costs awarded to him, without conditions, with accrued interest by presenting an application duly identified by the learned Advocate with tangible identity proof in the nature of the Voters Identity Card issued by the Election Commission of India.

12 Rule is made absolute in the above terms.