

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

WRIT PETITION NO.5303 OF 2016

Shree Sai Samarth Nagari Sah
Patsanstha Ltd.,
Sai Prasad Complex,
New Pimpal Wadi Road,
Shirdi, Tq. Rahata,
Dist. Ahmednagar,
Through its Manager -
Goraksha Jagannath Sapike,
Age : 49 years, Occ. Service,
r/o. Ekrukhe,
Tq. Rahata,
Dist. Ahmednagar

..Petitioner

Vs.

Employees Provident Fund
Organisation,
Sub-Regional Office,
Through its Assistant Provident
Fund Commissioner, Plot No.P 11,
Bhavishya Nidhi Bhavan,
M.I.D.C., Satpur,
Nashik

..Respondent

AND

WRIT PETITION NO.1647 OF 2016

The Amalner Co-operative
Urban Bank Ltd.,
Station Road, Amalner,
Tq. Amalner, Dist. Jalgaon
through Chief Executive Officer
Amrut s/o. Rambhau Patil
Age :51 years, Occ. Service,
r/o. At Post Amalner,
Tq. Amalner, Dist. Jalgaon

..Petitioner

Vs.

Employees Provident Fund
Organisation,
Sub-Regional Office,
Through its Assistant Provident
Fund Commissioner, Plot No.P 11,
Bhavishya Nidhi Bhavan,
M.I.D.C., Satpur,
Nashik

..Respondent

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In both petitions :

Mr.S.S.Chapalgaonkar, Advocate for petitioner

Mr.K.B.Choudhary, Advocate for respondent

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : FEBRUARY 22, 2017**

ORAL JUDGMENT (Per T.V. Nalawade, J.) :

Rule, made returnable forthwith. With the
consent of the learned Counsel for the parties,
heard finally.

2. These petitions are filed by the
petitioners to challenge the order passed by the
respondent, by which the petitioners are directed
to supply necessary record in respect of

Pigmy agents to ascertain liability of the petitioners to pay contribution under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

3. The learned Counsel for the petitioners tenders on record a copy of the decision in the case of the **Pachora Peoples' Co-operative Bank Ltd. Vs. The Employees Provident Fund Organisation, 2014(3)All.M.R.658**, wherein the point raised in this petition was considered by the Division Bench of this Court. The learned Counsel for the petitioners also tenders a copy of the judgment dated 11.01.2017 in Review Application No.186 of 2016, which was arising out of the afore-said decision. In the judgment dated 11.01.2017, in paragraph 32, following guidelines have been given :-

“(a) The EPF Authorities should collect necessary documents by inspection of records of the Establishment/Industry.

(b) A direction to the Management to produce the documents as may be found necessary, should be issued whenever the EPF Authorities realize that the Management is holding back certain documents.

(c) The appointment orders/contract letters or agreements in between the Banks and the pigmy gents/deposit collectors should be made available for scrutiny and should be taken into consideration.

(d) Based on the above documents, the EPF Authorities must adjudicate on the following aspects :-

(i) Whether, the contracts/ appointment orders have a semblance of employer-employee relationship ?

(ii) Whether, there is supervision, control and direction of the Bank over such agents ?

(iii) Whether, these agents are under an obligation to work only for a particular Bank or it's Branches ?

(iv) Whether, these agents are permitted to work elsewhere or undertake any other business, job, profession or calling ?

(v) Whether, such agents are primarily dependent upon the work of collecting deposits for a particular Establishment ?

(e) Interrogate the pigmy depositors to elucidate information about their exact nature of duties.

(f) Based on the documents and an analysis upon considering the above mentioned factors, the APFC will have to arrive at a conclusion supported by reasons that such pigmy agents can be termed as "workmen" and share employer-employee relationship with the Bank and are being paid wages disguised as commission. The said commission amount would then be termed as basic wages under Section 2(b) of the EPF Act."

4. In view of these circumstances, this Court holds that present petition can be decided in the same terms.

5. The respondents are directed to hold an enquiry in view of the aforesaid guidelines and make order accordingly.

6. The Writ Petition stands allowed and disposed of in the afore-said terms. Rule made absolute accordingly.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

kbp