IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1449 OF 2012

Jalgaon Janta Sahakari Bank Limited Petitioner

Versus

The Assistant Provident Fund
Commissioner (Compliance) Nashik Respondents

WITH
WRIT PETITION NO.1469 OF 2012

Nagar Urban Co-operative Bank Ltd
Ahmednagar Petitioner

versus

Regional Provident Fund Commissioner,
Nasik Respondent

WITH
WRIT PETITION NO. 1672 OF 2012

Lokvikas Nagari Sahakari Bank Ltd
Aurangabad Petitioner

versus

The Regional Provident Fund Commissioner (II)
Aurangabad and others Respondents

Mr. V.J. Dixit, Sr. counsel h/f Mr. A.N. Nagargoje advocate for petitioner in Writ Petition No.1449/94
Mr.V.N. Upadhye, advocate for petitioner in Writ Petition No.1469/12
Mr. P.S. Dighe h/f Mr. V.R. Dhorde advocate in Writ Petition No.1672/12
Mr. K.B. Chaudhari, advocate for the respondents.

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 20th July, 2017.)

PER COURT :-

1 I have heard learned Advocates for the respective sides.

2 The orders passed by the Provident Fund Office under section 7-A and allied provisions under the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (EPF Act), have been assailed in these petitions.

3 By the orders of this Court, amounts have been deposited by the petitioners before the PF department.

4 The issue is primarily as regards the status of pygmy agents/deposit collectors. These persons are associated with certain banks and cooperative societies and are entrusted with the work of collecting contributions. They are termed as pygmy agents or deposit collectors, in different parts of the State.

5 The issue, as to whether such persons can be termed as being workmen and whether the commission being paid to them is purely and genuinely in the form of commission or whether it is a disguise for actual payment of wages. The Division Bench of this Court to which I am a party, has dealt with an identical matter in **Pachora People's Co-op Bank Ltd Versus The Employees Provident Fund Organization** (2017 (2) Mh.L.J. 946). While deciding the said case, the Division Bench has recorded the submissions of the litigating sides which are

recorded in paragraph No.2 reproduced as under:-

> “ 2 We have heard the learned Advocates for the respective sides at length. The grounds put forth by the Applicant are as under:-
>
> "(I) It may please be considered that the orders under challenge passed by the authorities below are quite contrary to the evidence on record.
>
> (II) It may please be considered that the Pigmy Deposit Collectors are not employed on wages as per the provisions of Section 2(F) of the said Act.
>
> (III) It may please be considered that the commission is expressly excluded from the definition of "wages" and as such the pigmy agents cannot be called the employees working for the wages. The commission paid to the pigmy deposit collectors is not fixed; it may vary with the collection of amount. The engagement of pigmy deposit collectors is purely on contractual basis for a specific period and it does not require any qualification.
>
> (IV) It may please be considered that the work of pigmy deposit collectors is not like the other regular employees of the bank. There is no any master - servant relationship between the applicant Bank and the pigmy deposit collectors.
>
> (V) It may please be considered that the authorities below have wrongly relied upon the reported case law which is not at all applicable to the present case. The pigmy deposit collectors are collecting the amount from the customers of the Bank and getting commission for it as per their collection. As such, the commission paid to them

> is not fixed and therefore, it cannot be called as wages/ salary/ emoluments etc..
>
> (VI) It may please be considered that the Bank has intimated the pigmy agents to deposit their contribution as per letter/ order issued by the respondent authority. But, till this date they have not deposited their contribution. The respondent authority is likely to cease the account of the applicant bank. The respondent authority has issued notice dated 21.03.2014 and directed the Bank to deposit further amount of Rs.502652/- towards the provident fund, otherwise, the authority will proceed under the Act."

6 In so far as the Judgment of the Karnataka High Court dated 12.1.2003 in the matter of **Assistant Provident Fund Commissioner versus South Kanara Government Officer's Cooperative Bank Ltd** is concerned, this Court has gone through the same. The Karnataka High Court had not undertaken the exercise of lifting the veil and investigating as regards the factum of the relationship between such financial institutions and the pygmy depositors/deposit collector/bank agents. This Court concluded that the said Judgment, would therefore not apply to such cases. The observations recorded in para No.18 of the Judgment read as under;

> "18 We find from the conclusions of the Karnataka High Court that it was guided by the fact that the two employees in the matter had not

contended that the Bank had devised a method of paying commission with a view to circumvent the provisions of the Act. The said workers had not claimed that the payment of commission was aimed at suppressing and camouflaging the actual payment of wages. With due respect to the Karnataka High Court, we find that, in the said set of contentions, it should have been seen as to whether, the payment of wages were camouflaged by the payment of commission and for the said purpose, the corporate veil should have been lifted. That was not done in the South Kanara Bank Case (supra) and the defence of the Bank was accepted without scrutiny only because the two employees had not raised the said issue."

7 The Division bench in **Pachora Peoples** case (supra) finally culled out certain principles and factors for causing a proper enquiry and investigation into the factum of relationship between the financial institutions and the pygmy agents/depositors. These principles and factors are found in paragraph No.32 of the said Judgment which read as under:-

" 32 We are, therefore, of the view that the following factors must be considered by the EPF Authorities in such cases :-

(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 agents/ 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.* ”

8 Shri K.B. Chaudhari, learned Advocate appearing on behalf of the PF department fairly states that all these matters pertain to the period prior to the decision of this Court in the matter of Pachora Peoples Bank (supra). He, therefore, submits that the department did not have the assistance of the guidelines set out by this Court in Pachora Peoples Bank case. He submits that, firstly the department would cause a proper investigation into the records of these petitioners, in the light of the conclusions/tests set out by this Court in paragraph No.32 reproduced above. Secondly, he submits that the amount assessed by the PF authorities in the impugned orders should be deposited with interest with the PF department, considering the fact that all the employees concerned are beneficiaries and this aspect is a part of social security litigation.

9 Learned Advocates for the petitioners submit that some of the amounts, as were directed by this Court, have already been deposited and it may so happen that the petitioners may not be

liable to contribute towards PF contribution in the facts and circumstances of each case. He, therefore, prays that the amount be returned to the petitioners and they would tender an undertaking that, if they are found liable to pay the PF contribution, they would forth with deposit the same.

10 I am of the view that the above issue need not be reopened in order to avoid complications. All the amounts which have been deposited by the petitioners, whenever this Court has directed the deposit of such amount, shall be invested in FDR in any nationalized bank by the PF authorities or may follow such a course by which maximum interest can be accumulated over the said amount, keeping in view the policy of the PF department.

11 Consequently, in order to ensure a proper scrutiny of the records, in view of the law laid down by the Division Bench of this Court in paragraph No.32 reproduced above, the impugned orders are quashed and set aside only for the purpose of such scrutiny. I must state that this Court has not considered the merits of the contentions of the rival sides and keeping in view of the law laid down, the matters are being remitted back to the concerned PF authorities for a rehearing and for scrutiny of the records of the petitioners.

12 These petitions are therefore, partly allowed only for the reason as set out herein above.

13 As all these PF proceedings have been remitted to the respective authorities at Nasik and Aurangabad, the petitioners undertake to appear before the PF authorities at the respective places, depending upon the jurisdiction, on 11.8.2017 at 12 noon. Formal notices need not be issued by the PF department.

14 These petitioners, on the date of appearance, shall submit a complete list of the pygmy agents/depositors in regard to the period under enquiry along with their detailed addresses and telephone/cell numbers.

15 The PF authority would be at liberty to issue notices to the pygmy agents, if they feel it proper, to consider their cases in view of the principles set out in paragraph No.32 reproduced above.

16 The litigating sides shall abide by the dates of hearing which will be settled by the PF department and shall avoid seeking adjournments on unreasonable and trivial grounds.

17 The amounts deposited by the petitioners, upon being invested to generate maximum interest, shall be apportioned with the dues if any, by the PF department.

18 In the event the PF authority concludes that any of the petitioners are not liable to contribute PF contributions with regard to the depositors, the PF authorities shall accordingly pass an order refunding the amount to the concerned petitioners as expeditiously as possible and preferably within a period of three months from the date of the decision.

19 Eventually, if the PF authorities conclude that these petitioners are liable to deposit the PF contribution, the amount deposited shall carry interest which shall be equivalent to the interest provided under section 14-B and 7-Q in so far as damages and penalty are concerned and shall be adjusted against the dues.

(**RAVINDRA V. GHUGE , J**)

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