IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4711 OF 2016

Shankar s/o. Honaji Kubde ..Petitioner

Vs.

The Union of India
and others ..Respondents

WITH
WRIT PETITION NO.4712 OF 2016

Zakiurrehman s/o. Ziaurrehman
Shaikh ..Petitioner

Vs.

The Union of India
and others ..Respondents

In both petitions :-
Mr. Samir S. Shaikh, Advocate h/f. Mr. S.M.Taqui, Advocate for petitioner

Mr. S.B.Deshpande, A.S.G.I. for respondent no.1

Mr. K.B.Chaudhari, Advocate for respondent nos.2 to 4

Mr. P.B.Paithankar, Advocate for respondent no.5

CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATE : OCTOBER 23, 2018

ORDER :

The petitioners assail the communication/ order dated 27.08.2014 issued by the Employees Provident Fund Organisation, thereby taking a decision that until the excess/balance amount is collected from the petitioners, their bank account would not be released.

2. Learned Counsel for the petitioners submits that the petitioners were employees of Maharashtra Gramin Bank. They were superannuated in the year 2010. The pension amount of the petitioners was withheld by the bank. They filed Writ Petition Nos.7550 of 2012 and 7553 of 2012 against the action of the bank. In those petitions, this Court directed the Provident Fund authorities to hear the petitioners and take the decision afresh. After hearing the petitioners, the Provident Fund authorities took the impugned decision to withhold the bank accounts of the petitioners. Learned Counsel

submits that the Provident Fund authorities issued the impugned communication, subject to the decision in **Writ Petition No.123 of 2013 (Maharashtra Gramin Bank VS. Union of India and ors.)**, which was pending before the Nagpur Bench of this Court. Subsequently, Writ Petition No.123 of 2013 has been decided by the Nagpur Bench of this Court by its judgment and order dated 13.07.2017. According to learned Counsel for the petitioners, the pension account of the petitioners are illegally put on hold. The petitioners are receiving meager pension amount of Rs.1,600/-. The Provident Fund authorities did not follow the restraint order passed by this Court in the year 2004 in the petitions and released the amount of provident fund in favour of the petitioners. The respondents cannot hold and stall the retiral benefits of the petitioners, that would be against the provisions of Section 60(1)(g) of the Code of Civil Procedure. According to the learned Counsel, as per the judgments of the Apex Court in the cases of **Radhey Shyam Gupta VS. Punjab National Bank and anr., AIR 2009 SC 930** and **State of Jharkhand and ors. Vs. Jitendra Kumar Srivastava and anr., AIR 2013 SC 3383,** pension of the petitioners cannot be withheld. Learned Counsel further submits that the recovery after the retirement is not permissible. He relies on the judgment of the Apex Court in the case of **State of Punjab Vs. Rafiq Masih, LEX (SC) 2014 12 59.** Learned Counsel submits that the payment of the excess amount of provident fund was not because of the misrepresentation or fraud played by the petitioners. He submits that a great hardship would be caused to the petitioners, if pension accounts of the petitioners are withheld by the respondents authorities.

3. Mr.Choudhari, learned Counsel for Provident Fund authorities, submits that 216 employees, including the petitioners, retired during the

pendency of the proceedings. The respondents authorities had to release the provident fund amounts as per the statutory provisions. In the case of **Maharashtra Gramin Bank** (supra), Nagpur Bench of this Court passed the order to pay back the arrears amounts paid by the bank (employer). The excess amount has to be paid through the amount collected. The amount of Rupees Twenty Two Crores is already paid to the bank (employer). He submits that the provident fund department had requested the petitioners and the other employees to refund the excess amount. However, they did not refund the amount. In view of that, the bank accounts of the petitioners cannot be released. Learned Counsel submits that the contentions of the petitioners that the provident fund amount cannot be attached, has been negatived by this Court at Nagpur Bench in the judgment and order dated 13.07.2017 in the case of **Maharashtra Gramin Bank (supra).** He submits that the judgments relied upon by the petitioners are in different context. This Court has already determined the rights of the parties in the case of **Maharashtra Gramin Bank** (Writ Petition No.123 of 2013). The petitioners were party to the said petition through their Union.

4. Mr.Paithankar, learned Counsel for respondent no.5, submits that though the exemption was granted, the amount was recovered by the bank (employer). The bank (employer) approached this Court at Nagpur Bench by filing Writ Petition No.123 of 2013. The same is allowed and respondent no.5 is bound by the orders passed by the provident fund department and that of this Court.

5. In fact, in the present matters, there is hardly any issue to be adjudicated upon in view of the judgment and order of this Court at Nagpur Bench in the case of **Maharashtra Gramin Bank** (Writ Petition No.123 of 2013). In the said case, the employer had approached this Court, seeking direction against the

provident fund authorities, to refund the employees provident fund contribution paid in excess. In said case of **Maharashtra Gramin Bank** (Writ Petition No.123 of 2013) this Court directed the provident fund authorities to return the contribution that was paid over and above the ceiling prescribed by Clause 2(f) of the Statutory Scheme. In the said Writ Petition, the petitioners through their Union were the party respondent.

6. We would have accepted the contentions of the petitioners that the pension accounts ought not be attached and recovery after retirement, would be too harsh and inequitable. In the case of **Maharashtra Gramin Bank** (Writ Petition No.123 of 2013), to which the petitioners were parties through their Union, this Court has categorically rejected the contention of the employees' Union that the bank account cannot be attached. Specific observations to that effect has been made in the said judgment, which are reproduced thus :-

" .... If the Court did not intend that the excess amount should be returned to the petitioner – bank on its success in the writ petition, there may not have been a restrainment order against the provident fund authorities, not to disburse the amount to the employees during the pendency of the writ petition. We are surprised that despite the restrainment order of this Court, dated 10/02/2004 in Writ Petition No.2751/2003, the provident fund authorities have highhandedly credited the excess amount paid by the petitioner – bank towards its contribution for 216 retired employees of the bank, in their bank accounts after their retirement. We are not inclined to accept the submission made on behalf of provident fund authorities that the said amount was released in favour of the employees with the consent of the petitioner – bank. In the additional affidavit filed by on behalf of the petitioner – bank, it is pointed out by supporting documents that it was conveyed to the provident fund authorities by the petitioner – bank that while releasing the provident fund to its employees, the effect of the interim order of the High Court dated 10/02/2004 in Writ Petition No.2751/2003 should be noted. By the communications that are annexed to the additional affidavit-in-reply filed on behalf of the petitioner, it is pointed out that the provident fund authorities were warned that action of releasing the provident fund to the employees could be taken only in accordance with the interim order of restrainment, dated 10/02/2004. Despite the said warning that is conveyed by affixing a rubber stamp on the Forms in respect of the retired employees, it appears that the provident fund authorities have released, even the amount of the employers contribution that was in excess of the ceiling prescribed by Clause 2 (f) of the Statutory Scheme. If the provident fund authorities have not acted in consonance with the orders passed by the learned Single Judge of this Court on 10/02/2004, only the authorities are to be blamed. While holding that the provident fund authorities would be liable to return the employers contribution that was paid over and above the ceiling prescribed by

Clause 2 (f) of the Statutory Scheme, we are not inclined to accept the submission made on behalf of the provident fund authorities that in view of the provisions of Section 10 of The Employees' Provident Funds and Miscellaneous Provisions Act, they would not be entitled to attach the amount standing to the credit of the employees in the fund. The reference to the provisions of Section 10 of The Employees' Provident Funds and Miscellaneous Provisions Act is not well founded. The provisions of Section 10 of the Act would not be applicable in a case like the one in hand. The Judgments, reported in **(1972) 1 SCC 814 and (1999) 6 SCC 82, (1985) 4 SCC 71, (2011) 3 SCC 408 and (2005) 8 SCC 423,** and relied on by the learned counsel for the employees union cannot be made applicable to the facts of this case. When the notice of change given by the petitioner bank is held to be valid and legal, there is no question of construing the provisions of the Industrial Disputes Act and The Employees' Provident Funds and Miscellaneous Provisions Act liberally.

For the reasons aforesaid, the writ petition is allowed.

The respondents – provident fund authorities are directed to refund the provident fund contribution made by the petitioner – bank in excess of the statutory limit in respect of its employees during the period from 01/11/1998 to 31/10/2008 to the petitioner – bank with statutory interest @ 12% per annum from the date of payment of the excess contribution, till the date of realization of the amount. Since the amount of Rs.22,00,00,000/- (Rs.Twenty Two Crore) that was deposited by the provident fund authorities in this Court in terms of the interim orders passed in this petition was withdrawn by the petitioner – bank with the permission of this Court, we direct the petitioner – bank to adjust the amount to which it is entitled in terms of this order, and return the amount that may be in excess, to the provident fund authorities. If any amount is payable by the provident fund authorities to the petitioner – bank after deducting the sum of Rs.22,00,00,000/-, the same may be paid by the authorities to the petitioner – bank within one month.

Rule is made absolute in the aforesaid terms with no order as to costs."

7. Considering the observations made by this Court in the case of **Maharashtra Gramin Bank,** it would not be possible to accept the contentions of the petitioners. In the light of the above, no relief can be granted to the petitioners.

8. The Writ Petitions are disposed of. No costs.

9. This order would not be an impediment to the petitioners to take any other recourse as may be permissible in law.

[**R.G. AVACHAT, J.**] [**S.V. GANGAPURWALA, J.**]

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