IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4938 OF 2017

Bhimrao Dadarao Kudar & ors.

… **Versus** …

The State of Maharashtra & ors.

...

Mr. S.N. Lute, Advocate for the petitioners

Mr. S.M. Ganachari, AGP for the respondent No.1/State

Mr. A.V. Hon, Advocate for the respondent No.2

Mr. N.K. Chaudhari, Advocate for the respondent No.3

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CORAM : P.B. VARALE &
SMT. VIBHA KANKANWADI,JJ.

DATE : 21st DECEMBER, 2018

PER COURT :

1 Heard learned counsel for the petitioners, the learned AGP for respondent No.1, the learned counsel Mr. A.V. Hon appearing for the respondent No.2 and the learned counsel Mr. Chaudhari appearing for respondent No.3. The petition is taken out for hearing by consent of the parties. The petitioners approached this Court with a grievance that the petitioners have worked with respondent No.2-Sangh for a considerable long period, approximately for more than 20 years. Petitioners were working with respondent No.2 in various capacities either at managerial

level or at subordinate positions. The basic grievance raised in the petition was of deductions from the salary amount on an impression given to the petitioners that this amount is deducted as an amount against the Provident Fund and the respondent No.2 would repay the amount. Then it is submitted in the petition that the petitioners have approached the respondent No.2 after their retirement from service for raising a grievance against the unpaid amount deducted under the head of Provident Fund account, but no heed was paid to the grievance raised by the petitioners. It was also stand in the petition that certain salary amount is also not paid to the petitioners. On 18th December, 2017 while issuing notice the Division Bench of this Court made certain important observations and it would be useful for all purposes to reproduce these observations. The order reads thus :

> "So far as arrears of salary are concerned, services of the petitioners came to an end in the year, 2003. The same cannot be considered on account of latches.
>
> As far as provident fund is concerned, in case the said scheme was applicable to the petitioners, then the petitioners will be entitled for the amount of Provident Fund."

2 In response to the notice issued by this Court reply is filed.

Mr. Chaudhari, the learned counsel appearing for respondent No.3 by inviting our attention to the affidavit-in-reply filed through Shri. Ramasahayam Vivek Raman Reddy, Assistant Provident Fund Commissioner submitted before us that since the date of inception the respondent No.2 establishment, a Co-operative Society, does not fulfill or satisfy the criteria prescribed in Section 16 (1)(a) of the Act of 1952, and therefore, it is not covered under the provisions of the Act of 1952. It is further stated in the affidavit-in-reply that it also appeared that since the year 1992, respondent No.2 is not carrying out any business activity till date. A further submission is made in the affidavit-in-reply and the same reads thus :

> The amount withdrawn from the salary of the petitioners for depositing the same towards various funds created under the Act of 1952, were never deposited by the respondent No.2 in the office of answering respondent……….

3 Now, these statements made in the affidavit-in-reply on behalf of respondent No.3 answer the question posed by this Court in December, 2017 in paragraph No.3. The respondent No.2 in its affidavit-in-reply made the following statements.

The respondent No.2 Kharedi Vikri Sangh is registered way back in the year 1961 and it is dealing with the purchase of cotton through Federation and also sell of fertilizers and pesticides. It has never worked with the aid or power and also not employed 20 or more persons from the date of its establishment till today. The provisions of Provident Fund Act are therefore not at all attracted. Then it is stated that liquidator came to be appointed on the respondent No.2-Sangh vide order dated 08.07.1996 and it was under liquidation for considerable long time. Then there is a reference to a writ petition filed in this Court challenging the order of appointment of liquidator. It may not be necessary for us to refer to these factual aspects. Suffice to say that, in the affidavit-in-reply the respondent No.2 admits the position that the Sangh has made deductions and deposited the amount in the Savings Bank Account maintained with Jalana District Central Co-operative Bank. It is a submission further made in affidavit-in-reply that the employees have already withdrawn the amount which was deducted towards the Provident Fund and the petitioners have no right again to claim the amount by way of this petition.

4 Though this statement is made in affidavit-in-reply, no supporting material is placed on record. Considering these facts we are

of the opinion that in so far as the issue of the applicability of the scheme to the petitioners and their entitlement based on this applicability will have to be replied in negative in view of the affidavit-in-reply filed on behalf of respondent No.3. Then there are certain disputed question of facts. We are not inclined to entertain the petition now on these disputed question of facts.

5 At this stage, the learned counsel for the petitioners submitted before us that the liberty for availing other remedies for entitlement of the monetary claim be kept open by approaching competent forum including Civil Courts, if so advised. We find that no prejudice would be caused to the respondents by permitting the petitioner to avail the other remedies, if so advised. The entitlement of the claim by the petitioners on approaching to the other forum would be decided on its own merits. Considering these above referred facts the petition is dismissed with liberty to the petitioners to avail other remedies, if so advised.

(Smt. Vibha Kankanwadi)
JUDGE

(P.B. Varale)
JUDGE

agd