# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.19894 of 2016**

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Bihar College of Pharmacy New Bailey Road, PS-Khajpura, District-Patna through its Chairman, Rajendra Kumar, Son of late Chandeshwar Prasad Singh, Resident of Village- Chataru, P.S. - Atri, District- Gaya.

... ... Petitioner/s

Versus

1. The Employees Provident Fund Appellate Tribunal through its Registrar, Scope Minar Core-2, 4th Floor, Laxmi Nagar, New Delhi.
2. The Assistant Provident Fund Commissioner, Patna, Employees Provident Fund Organization, Regional Office, Bhavishyanidhi Bhawan, R Block, Road No. 6, Patna.
3. The Recovery Officer, Employees Provident Fund Organization, Regional Office, Bhavishyanidhi Bhawan, R Block, Road No. 6, Patna.
4. The Enforcement Officer, Employees Provident Fund Organization, Regional Office, Bhavishyanidhi Bhawan, R Block, Road No. 6, Patna.
5. Brajesh Kumar Pandey Son of late Rajendra Pandey, Resident of Village- Maharaja Hat, P.S. Ara Town, District- Bhojpur.
6. Madan Mohan Choudhary Son of late Ram Niwash Choudhary, Resident of Mohalla- Bazar Samiti, P.S. Ara Nawadah, District- Bhojpur.
7. Jai Nandan Sharma Son of late Arjun Singh, Resident of Mohalla- Rastriyaganj, P.S. Phulwarisharif, District- Patna.
8. Awadhesh Kumar Son of Sri Devki Singh, Resident of Mohalla- New Bengali Tola Mithapur, P.S. Jakkanpur, District- Patna.
9. Arjun Kumar Sharma Son of Bindeshwar Sharma, Resident of Village- Murgichak, P.S. Ghosi, District- Jehanabad.
10. Ajay Kumar Singh Son of Sri Baleshwar Singh, Resident of Village- Ramaich, P.S. Bakhtiyarpur, District- Patna.
11. Nawal Kishor Son of late Satish Chand Sinha, Resident of Village- Karmantola, P.S. Ara Nawadah, District- Bhojpur.
12. Ramashish Prasad Son of late Ram Kishun Prasad, Resident of Mohalla- Bhawar Pokhar Bagicha, P.S. Pir Bahor, District- Patna.
13. Balmiki Singh Son of late Kailash Singh, Resident of Village- Sakara, P.S. Hasnawa, District- Nawadah.
14. Kishor Kumar Thakur Son of Chaturi Thakur, Resident of Mohalla- Ram Nagar Sector- 4, P.S. Rajiv Nagar, District- Patna.
15. Ram Nandan Sharma Son of late Ragho Singh, Resident of Village- Babhanpur, P.S. Janipur, District- Patna.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Arun Kumar
For the Respondent/s : Mr.Prashant Sinha, Adv.

Mr. Bauajha, Adv.
Mr. Prashant Kr. Sinh., Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**
**ORAL JUDGMENT**
**Date : 04-04-2019**

Heard learned counsel for the petitioner and learned counsel for the State.

**2.** In this case, the petitioner is challenging the order dated 30th July 2004 by which the Assistant Provident Fund Commissioner in exercise of power under section 7 (A) of the Act has made an assessment of Rs.7,96,319/-(seven lacs ninety six thousand three hundred nineteen) after adjusting the amount, which has been deposited by the petitioner.

**3.** The petitioner is an educational Institution, imparting the educational course. Earlier the Promoter of this Institution was Surendra Sharma and later on, Sri Rajendra Kumar replaced him and became the Promoter of this Institution. The matter in the present case is for the period from 01-1992 to 10-2003. As the Establishment failed to deposit the contribution amount as per the provision of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, notices were issued to the petitioner. At the relevant time, Mr. Surendra Sharma was the Promoter of the College, J.N. Pandit (Principal) and Mr. K.K. Thakur (Accountant) had appeared as representatives on behalf of the employer, requested for one month time, which was granted, the copy of report dated 01.10.2002 was also handed over to the representative of the College. The case was again taken up on 05.01.2004, but the representative of the College remained absent. Again another date was fixed for 28th January 2004, but that time also, no one appeared, the proceeding was adjourned to 9th February 2004 with a clear direction for production of Attendance & Salary Registers, Ledgers, Cash Books, Vouchers and the Income & Expenditure Account for the period March 1991 till the date of issuance of notice. Again no one had appeared and produced the record. Again next date was fixed for 06.04.2005 and a proper notice was sent to the petitioner, but that time also, no one from the side of the College appeared and ultimately on the basis of record, the assessment has been made.

**4.** In the argument, the learned counsel for the petitioner has submitted that never the establishment has or had employed more than twenty or more and as such wrongly applied the provision of Employees' Provident Funds Act and assessed the amount under the Act. It is an undisputed fact that the petitioner itself has deposited the contribution amount to the Employees Provident Fund earlier which leads to a presumption that certainly the number of persons employed therein were twenty and more, in that circumstance, the contribution was deposited under the

Employees' Provident Funds Act. When the Promoter changed, the policy changed then the applicability of the Act has come under challenge. The provision of Section 1 (5) of the Employees' Provident Funds and Miscellaneous Provisions Act which stipulates that an establishment to which this Act applies would continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. Even if this Court accepts the plea of the petitioner that the number of persons employed in the establishment have reduced, but the Employees' Provident Funds Act would remain applicable. Once the Act has been applied and the contribution has been deposited mere reduction of number of employees below will not get exemption, but would remain applicable. The applicability cannot be challenged on the ground of reduction of number of employees. The challenge of applicability of the Employees' Provident Funds Act *per se* is not sustainable in law. Again the petitioner has challenged the order of Assistant Provident Fund Commissioner before the Appellate Authority in A.T.A. No.183 (B) of 2005, there also, it has been recorded that the petitioner failed to deposit the dues and he also failed to produce document before the authority. If the Establishment fails to produce the record for the purpose of assessment then the assessment would be made applying doctrine of best judgment, made assessment on the basis of material available on record.

**5.** This Court has earlier passed the order for deposit of Rs.50% amount that has been deposited to the Employees' Provident Fund then the question of identification and verification of employees during intervening period came for consideration, that process was adopted, accordingly, identification of employees has been done which has been challenged in the I.A. No. 2 of 2019. As per direction of this Court, the Assistant Provident Fund Commissioner held enquiry, identified the person who were/are employees-employed by the College-petitioner.

**6.** This Court does not find any error in identification of employees. The order of assessment is applicable confined to the period from 01-1992 to 10-2003.

**7.** This Court does not find any error in the enquiry report submitted by the Assistant Provident Fund Commissioner which is under challenge. Hence this application being devoid of merit, is accordingly dismissed and this Court directs that the rest amount, which is lying with the College, be deposited to the Employees Provident Fund and, in turn, the Employees Provident Fund will be obliged to make payment to the respective persons. If the petitioner refused to make attestation of the form, in that circumstance, it will be presumed that the attestation has been done and accordingly the payment would be made.

mkchy/- **(Shivaji Pandey, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | N/A |
| **Uploading Date** | 12.04.2019 |
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