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

WRIT PETITION NO.4230 OF 2019

INSTITUTE OF COMPUTER EDUCATION THROUGH PRINCIPAL
VERSUS
ASSISTANT PROVIDENT FUND COMMISSIONER REGIONAL PROVIDENT FUND OFFICE SOLAPUR

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Advocate for the Petitioner : Shri Deshmukh Sachin S.
Advocate for the Respondent : Shri Nitin K. Chaudhari h/f Shri K.B.Chaudhari

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

**DATE :- 18th June, 2019**

**Per Court:**

1 I have considered the strenuous submissions of the learned advocate for the petitioner and the learned advocate appearing on behalf of the respondent/ Employees' Provident Fund Department (for short, hereinafter referred to as “the Department”).

2 The petitioner has put forth two contentions. Firstly that, unless an enquiry under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, hereinafter referred to as “the said Act”) is not concluded, the Department cannot take recourse to Section 14-B proceedings of the said Act. Secondly, the Department has not yet dealt with the issue of applicability of the provisions of the said

Act.

3 I find from the provisions of the said Act that the section 7-A enquiry is not in all cases a foundation for initiating the section 14-B proceeding, which is aimed at assessing the damages to be recovered. In matters where the provident fund contributions are outstanding, the Department can initiate the section 7-A proceedings to assess the unpaid dues. In the instant case, there is no dispute that the petitioner has deposited the provident fund contributions, though belatedly, from 2001 upto 2012. With these provident fund contributions having been deposited and the Department not finding any shortfall in such contributions, the section 7-A enquiry is purposeless and is unwarranted.

4 In the above backdrop, the Department can initiate the proceedings under Section 14-B to assess as to whether, the payment of provident fund contributions, keeping in view paragraph 38 of the scheme framed under the said Act, have been belatedly deposited. In the event of delayed payment of provident fund contributions, the Establishment would be liable to pay the damages as per the scheme. Such damages cannot be assessed without conducting an enquiry under Section 14-B. In view of this legal position, the contention of the petitioner as regards the tenability of the section 14-B enquiry, cannot be entertained.

5 Insofar as the applicability of the said Act to the Educational Institutions is concerned, the said Act was made applicable to the

petitioner institution by the Enforcement Officer of the Department w.e.f. 01.09.2001, as is informed vide communication dated 05.11.2012. The provident fund code number was also allotted to Shri Mahatama Basweshwar Educational Society and a separate code number was also allotted to the petitioner institute with regard to it's employees, w.e.f. 01.09.2001. This applicability of the provisions of the said Act from 01.09.2001 has not been challenged by the petitioner and the same has, therefore, attained finality. The petitioner has also deposited the provident fund contributions from September, 2001 till 2012.

6 In view of the above, this Writ Petition seeking to challenge the enquiry under Section 14-B, which is still in progress, is devoid of merit and therefore, stands dismissed.

7 It is, however, made clear that the petitioner shall participate in the proceedings under Sections 7-Q and 14-B of the said Act and in the event, there is any grievance, it would have it's remedy as provided under the said Act.

8 The petitioner shall appear before the concerned officer of the Department at Solapur on 01.07.2019 at 11:00 am. It would have the liberty to participate in the said proceedings by rendering cooperation to the Department and by producing relevant records, as may be advised or demanded by the Department.

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