

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

WRIT PETITION NO. 13528 OF 2018

Shri Balasaheb s/o Raosaheb
Deshmukh, Age : 53 yrs.,
Occu : Business : Proprietor
of M/s. Hotel Regal,
R/o : Near Bus Stand,
Ambajogai, Beed, Dist.Beed

...Petitioner

VERSUS

The Assistant Provident Fund
Commissioner (Comp.),
Sub Regional office,
Employees Provident Fund
Organization, Plot No.2,
Town Centre, CIDCO,
Aurangabad.

...Respondent

...

Advocate for the Petitioner : Shri A. R. Kawade
Advocate for the Respondent : Shri N. K. Choudhari

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 15th MARCH, 2019.

...

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner has approached this Court by setting forth

the following prayers below paragraphs 23(A), (B) and (C) :-

(A) By a writ of certiorary, quashed and set aside the impugned order passed by the Central Government Industrial Tribunal, Nagpur (CGIT) dated 28.06.2018 in I. A No. 1 (order passed in case Diary No. CGIT/NGP/EPFA/22/2017-18) thereby rejected the application of the petitioner for condonation of delay.
(Exhibit -A, Page – 17)

(B) Be please to allow the delay condonation application I. A. No. 1 and delay may kindly be condoned and appeal may kindly be directed to be registered and hear the said appeal on merits by Learned Central Government Industrial Tribunal, Nagpur.

(C) Pending hearing and final disposal of this writ petition the operation and implementation of the warrant of arrest dated 23.02.2017 issued by the respondent **(Exhibit -M, Page-39)** may kindly be stayed. "

3. The petitioner has deposited an amount of Rs. 2,50,000/- in this Court pursuant to the order dated 06/12/2018.

4. I have considered the submissions of the learned Advocates for the respective sides at length.

5. By the impugned order dated 28/06/2018, the Central Government Industrial Tribunal, Nagpur (CGIT) has concluded that the delay caused by the petitioner beyond 60 days, cannot be condoned unless a sufficient cause is shown. This Court had tested the bonafides of the petitioner by directing him to deposit a substantial amount of arrears. The arrears are Rs. 6,07,826/-. The petitioner has deposited Rs. 2,50,000/-.

6. Considering this position, I find that the petitioner would be remediless if the delay is not condoned because his appeal before the Appellate Tribunal would stand disposed off.

7. The law laid down in *Collector, Land Acquisition, Anantnag v/s. Katiji*, AIR 1987 SC 1353 and *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 649 would be applicable to this case.

8. In view thereof and the amount of Rs. 2,50,000/- been deposited, that the impugned order dated 28/06/2018 is quashed and set aside. The proceedings in case Diary No.

CGIT/NGP/EPFA/22/2017-18 stands remitted to the office of the CGIT, Nagpur. The litigating sides shall appear before the said Tribunal on 15/04/2019 at 11.00 a.m. and participate in the hearing. The CGIT, Nagpur would consider the appeal filed by the petitioner on its own merits.

9. The respondent is permitted to withdraw the amount of Rs. 2,50,000/- with accrued interest, if any, without conditions, through an authorized representative. The said amount shall be apportioned to the dues assessed against the petitioner.

10. Consequent to the above, the arrest warrant dated 23/02/2017 shall lose its efficacy subject to compliance of the above directions. In the event the petitioner fails to appear before the CGIT on 15/04/2019, the said arrest warrant shall stand restored and would be effected against the petitioner.

11. Considering the proceedings and the orders passed under Section 7-A, 14-B and 7-Q as are set out in page No. 62 of the petition paper book, liberty is granted to the petitioner

to avail of remedies as against the said proceedings, as is permissible under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

12. Needless to state, the petitioner shall not seek adjournments before the CGIT. In the event, the petitioner desires to procure some documents from the respondent, an application listing out all the documents that the petitioner desires, shall be tendered to the respondent on or before 25/02/2019. The respondent shall supply the documents expeditiously and in the event of any shortfall, shall produce the said documents before the CGIT on 15/04/2019.

13. The Nazir Section of this Court shall supply a demand draft to the respondent pursuant to the withdrawal of the said amount of Rs. 2,50,000/- with accrued interest, to be credited in the account of the respondent.

14. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-