

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8028 OF 2019

M/s Nirmal Ujjwal Credit Co-operative Society Ltd. Nagpur

-vs-

The Assistant Provident Funds Commissioner, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. N. Bhattad, Advocate for petitioner.

Smt U. R. Tanna, Advocate for respondents.

CORAM : A. S. CHANDURKAR, J.

DATE : December 16, 2019

Leave is granted to the petitioner to amend paragraph 9 as well as to delete ground-C in the writ petition.

2. Rule. Heard finally considering the short issue involved.

The challenge raised in this writ petition is to the order dated 02/08/2019 passed by the learned Presiding Officer, Central Government Industrial Tribunal, Nagpur thereby dismissing the appeal preferred by the petitioner in default. The notices issued under provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the said Act) seeking recovery of the amounts due as a result of dismissal of that appeal are also under challenge.

3. The Assistant Provident Fund Commissioner on 24/09/2014 passed an order under Section 7-A of the said Act and determined the amounts due and payable by the petitioner-establishment. Being aggrieved by that order the petitioner filed an appeal under Section 7-I of the said Act. By an interim

order dated 03/11/2014 the application filed under Section 7-O of the said Act came to be allowed and the petitioner was directed to deposit 20% of the amount adjudicated under Section 7-A of the said Act. On 02/08/2019 the learned Presiding Officer noted that the counsel for the petitioner-appellant was absent. The request made on behalf of the respondent No.1 to dispose of the appeal in terms of the judgment in Writ Petition No.5154/2016 (*Sanmitra Urban Co-operative Bank Ltd. Akola vs. Assistant Provident Fund Commissioner, Akola and anr.*) decided on 25/04/2019 was noted. The appeal however came to be dismissed in default. Pursuant thereto notice under Section 8-F for recovery of the aforesaid amounts and a warrant of arrest was also issued.

4. Shri S. N. Bhattad, learned counsel for the petitioner submitted that in *Sanmitra Urban Co-operative Bank Ltd. Akola* (supra) this Court has considered the issues that were also raised in the appeal preferred by the petitioner. This Court was pleased to set aside similar orders passed by the Assistant Provident Fund Commissioner and had remanded the matters to the Assistant Provident Fund Commissioner to hold a proper enquiry afresh. The request made on behalf of the respondent No.1 before the Tribunal on these lines has also been noted in the order dated 02/08/2019. However the appeal came to be dismissed in default. He submitted that absence of the petitioner's counsel was not deliberate and had the Tribunal ought to have accepted the request made on behalf of the respondent No.1 to remand the proceedings for a fresh inquiry. He therefore submits that similar course as followed in the

aforesaid decision be adopted.

5. Ms U. R. Tanna, learned counsel for the respondent No.1 supported the impugned order. As the petitioner's counsel was absent the Tribunal had no option but to dismiss the appeal. It was however not disputed that a request was made on behalf of the respondent No.1 to remand the proceedings to the Assistant Provident Fund Commissioner in the light of the adjudication referred to by the learned Counsel for the petitioner. Hence no interference with the impugned order was called for.

6. I have heard the learned counsel for the parties. It is seen that the order passed under Section 7-A of the said Act was under challenge at the instance of the petitioner before the Tribunal. Since according to the respondent No.1 the grounds raised in the said appeal were somewhat similar to the grounds adjudicated in *Sanmitra Urban Co-operative Bank Ltd. Akola* (supra) a request was made to dispose of the appeal in terms of the directions issued by this Court in that judgment. However in absence of petitioner's counsel the appeal was dismissed in default. Considering the similarity of challenges that were raised by the petitioner in the appeal filed under Section 7-I of the said Act and in the light of the adjudication by this Court in *Sanmitra Urban Co-operative Bank Ltd. Akola* (supra) it is found that similar course can be followed which would enable proper adjudication of all the issues raised.

7. Accordingly the order dated 02/08/2019 passed by the learned Presiding Officer, Central Government Industrial

Tribunal/Labour Court is set aside. Similarly the order dated 24/09/2014 passed under Section 7-A of the said Act is set aside. The proceedings are remitted to the Assistant Provident Fund Commissioner to decide the same afresh in the light of observations in Writ Petition No.5154/2016 (*Sanmitra Urban Co-operative Bank Ltd. Akola vs. Assistant Provident Fund Commissioner, Akola and anr.*) decided on 25/04/2019. In view of these directions the appeal preferred by the petitioner under Section 7-I of the said Act would not survive. Consequently the notices at Annexures-E and H would also not survive.

The Writ Petition is allowed. Rule is made absolute accordingly. No costs.

JUDGE