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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1458 OF 2019

IN

WRIT PETITION NO.5502 OF 2010

Mohmad Iqbal And Ors. ...Applicants/Petitioners

vs

Patel Engineering Works And Ors. ...Respondents

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Mr. Jaiprakash Sawant, for the Applicants.

Mr. Piyush Shah, for Respondent Nos. 1 to 3.

Mr. Vinod Kothari, i/b. M/s. Apex Law Partners, for Respondent No.4.

Mr. Ravi Rattesar, for Respondent No.5 – Employees Provident Fund.

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CORAM : S.C. GUPTE, J.

DATED: 21 FEBRUARY, 2020

P.C. :

. This civil application seeks directions against Provident Fund Organisation, Bandra, Mumbai for release of Provident Fund dues of the Applicants, who are original Petitioners in the writ petition. It also seeks expeditious hearing of the captioned writ petition. The writ petition challenges an order passed by the Industrial Court on 18 May 2010 in a complaint of unfair labour practice. The complaint concerned the alleged termination of the Applicants' services by Respondent No.1 establishment. It was the case of Respondent No.1 that it had closed its undertaking by notice dated 31 October 2003 and that the services of

the Applicants had come to an end as a result of this closure. The Industrial Court partly allowed the complaint. Whilst it did not interfere with the order of closure issued by Respondent No.1, it gave enhanced compensation to the Applicants herein. Being aggrieved, the Applicants have filed the present writ petition and have taken out the present civil application therein as noted above.

2. The immediate grievance of the Applicants herein is that they all have superannuated pending hearing and final disposal of the writ petition, which was admitted on 28 July 2010, and that, in the premises, their P.F. dues, which are at any rate due to them, ought to be paid by the Provident Fund Organisation. On the other hand, it is submitted on behalf of the Provident Fund Organisation that the Applicants are not eligible for such payment, since their case is pending hearing before this Court. Learned Counsel appearing for the Organisation submits that at best, the Applicants may be entitled to apply for an advance within the meaning of Clause 68-H of the Employees' Provident Funds Scheme, 1952.

3. After all parties are heard, this Court is of the view that it would be in the interest of justice to order the Provident Fund Organisation to pay provident fund dues of the Applicants herein on the basis that their services came to an end as of 31 October 2003, though this payment by itself would not prejudice the Applicants' case against Respondent No.1 establishment. After all, it cannot be disputed that the Applicants did work with Respondent No.1 till 31 October 2003 and their services could be said to have come to an end at the earliest,

without prejudice to their rights and contentions in the present petition, on 31 October 2003. If that be the case, there should be no objection in payment of provident fund dues as well as extension of pensionary benefits to the Applicants on the basis that the dues become payable on 31 October 2003.

4. The civil application is, accordingly, disposed of by directing Provident Fund Organisation, Bandra, Mumbai, to pay provident fund and pensionary dues of the Applicants, subject to the Applicants making a proper application in that behalf. The dues shall be paid on the basis that the services of the Applicants have come to an end on 31 October 2003. This, however, shall not prejudice the Applicants' case in the present writ petition against Respondent No.1. With these directions, the civil application is disposed of.

(S.C. GUPTE, J.)

Smita
Gonsalves

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