

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5355 OF 2021

Maharashtra Education Society, Pre-Primary School ... **Petitioner**
V/s.

The Regional Provident Fund Commissioner-II,
Regional Office, Pune-1 & Anr. ... **Respondents**

Mr. Aumkar V. Joshi for the petitioner.

Mr. Suresh Kumar a/w. Ms. Mohinee Chougule for the respondents.

CORAM : G.S.KULKARNI, J.

DATE : 8th September, 2021.

PC.:

Heard Mr. Joshi, learned counsel for the petitioner and Mr. Suresh Kumar, learned counsel for the respondents.

2. The challenge in this petition is to an order dated 23 June, 2021 passed by the Regional Provident Fund Commissioner-II, Pune (for short “the authority”) under Section 7Q of the Employees Provident Funds and Miscellaneous Provisions Act. By such order, the petitioner is called upon to discharge a liability towards the Employees Provident Fund dues at an amount of Rs.3,22,001/-. The impugned directives read thus:

“For the above reason, I, Shiurkar Satwatsing Gopa, Regional Provident Fund Commissioner-II, R.O, Pune-I, in exercise of the powers conferred on me under section 7Q of the Act order that interest for the period 02/2011 to 03/2016 Rs.3,22,001/ (Rs. Three lakh twenty two thousand and one only) under Para 32A of EPF

Scheme, 1952 to be recovered from M/s. Maharashtra Education Society's Pre Primary School.”

3. Mr. Joshi has drawn the Court's attention to the observation as made by the authority in the impugned order (Page 206) to the effect that the authority has observed that an amount of Rs.3,80, 075/- was paid by the petitioner by Demand Draft No. 081607 dated 7 June, 2018, as interest for the period from 01.03.1986 to 31.03.2014. His submission is that considering the period in respect of which the impugned order is passed some period, namely, the period from February, 2011 to 31 March, 2014 has overlapped, for which period interest payment was already made and hence it could not have been demanded for the second time by the impugned orders and/or the same was required to be adjusted. In support of such submission, Mr. Joshi has drawn my attention to the letter dated 26 February, 2019 (page 116 of the paper book) addressed to the Assistant Provident Fund Commissioner, Pune wherein the petitioner's parent society had recorded as under:

“You have issued a notice at Ref. No. 1 to Maharashtra Education Society's constituent unit viz. MES Pre-Primary School Bhigwan Road, Baramati the similar grounds for which it was issued to Maharashtra Education Society & the above mentioned orders were passed. We have replied to your above referred notice on 08.06.2018. MES Pre-Primary School, Baramati has also deposited Rs.3,80,075/-, voluntarily, by way of DD on 08.06.2018 towards the interest earned.”

Mr. Joshi's contention referring to the above letter is to the effect that if such payment was to be considered and adjusted, then the demand of Rs. 3,22,001/- as raised by the impugned order, certainly would not be an appropriate demand, in the absence of the adjustment for the overlapping period.

4. Having perused the impugned order, there appears some substance in the contention as urged by Mr. Joshi. Mr. Suresh Kumar would also not dispute that the impugned order, does not consider such aspect as there is no discussion in the impugned order in this regard. If any such amount was deposited on behalf of the petitioner which covered part of the period in respect of which the impugned order was passed, as also observed by the authority itself, in paragraph 3 of the order, certainly some reasoning as to why such interest was discarded, finds no place in the impugned order. In this situation, in my opinion, for this limited purpose, the issue needs to be revisited by the Regional Provident Fund Commissioner .

5. As a sequel to the above discussion, I am of the opinion that no purpose would be served to adjudicate this petition any further. The

impugned order dated 23 June, 2021 passed by the Regional Provident Fund Commissioner, Pune is accordingly set aside, with the issue being remanded to the Regional Provident Fund Commissioner for considering the petitioner's plea of adjustment of the payment of interest made on behalf of the petitioner on 7 June, 2018 for part of the period as covered by the impugned order and pass a fresh order considering such material. All contentions of the petitioner in that regard are expressly kept open. A fresh order be passed within a period of two months from today.

6. It is made clear that I have not examined the merits of the petitioner's contention in any other pending proceedings.

7. Disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)