

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

LETTERS PATENT APPEAL NO.514 OF 2012
IN
WRIT PETITION NO.2489 OF 2012

Kranti Education Society,
Virali (Bk), Tah. Lakhandur,
District Bhandara, through its
Secretary Kashinath Wadguji Humne
R/o Kosla (Kondha),
Tah. & District Bhandara

... Appellant

-vs-

1. Assistant Commissioner,
Employees Provident Fund Organization,
Raghuji Nagar, Tukdoji Maharaj Chowk,
Nagpur
2. The Secretary, Social Welfare,
Cultural and Sports Department,
Government of Maharashtra,
Mantralaya, Mumbai
3. The Social Welfare Officer,
Government of Maharashtra,
C/o Zilla Parishad, Bhandara,
District Bhandara
4. The Employees Provident Fund
Appellate Tribunal, 5th floor,
Core 2, SCOPE Minor,
Laxmi Nagar, Delhi

... Respondents

Shri A. Z. Jibhkate, Advocate for appellant.

Shri H. N. Verma, Advocate for respondent No.1.

Shri Ashish M. Kadukar, Assistant Government Pleader for respondent No.2.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : November 15, 2021

Oral Judgment : (Per A. S. Chandurkar, J.)

This Letters Patent Appeal raises challenge to the judgment of learned Single Judge dated 04/12/2012 in Writ Petition No.2489/2012 whereby the said writ petition challenging the orders passed in proceedings under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short the Act of 1952) came to be dismissed.

2. The appellant is a Society registered under provisions of the Maharashtra Public Trusts Act, 1950 and the Societies Registration Act, 1860. It is running a high school having staff of 12 employees, three hostels with each hostel having staff of 3 employees as well as a D.Ed college wherein 13 contributory employees are engaged. Since the total number of employees in all the three institutions was more than 20, the Enforcement Officer recommended application of the provisions of the Act of 1952 from 01/08/2007. Pursuant thereto order under Section 7-A of the Act of 1952 was passed on 12/02/2009 thereby applying the provisions of the Act of 1952 from 01/07/2003. The appellant was directed to pay contribution for the period from July 2003 to January 2009. An application for review filed by the appellant came to be rejected after which the appellant approached the Employees Provident Fund Appellate Tribunal in appeal. The Tribunal

held that since the number of employees exceeded 20 and the hostel employees were working in connection with the work of the school they were covered under definition of “employee” in the Act of 1952. On this count the appeal came to be dismissed. Writ Petition No.2489/2012 preferred by the appellant was dismissed by the learned Single Judge after holding that the finding recorded by the Tribunal was just and proper. It was also observed that the ground as regards absence of functional integrality was not raised before the statutory authorities. Being aggrieved the said order is challenged in the present Letters Patent Appeal.

3. Shri A. Z. Jibhkate, learned counsel for the appellant submitted that the high school run by the appellant was receiving grant-in-aid and the staff was covered by the provisions of Contributory Provident Fund Scheme. In the light of the decision in *Yeshwant Gramin Shikshan Sanstha vs. Assistant Provident Fund Commissioner and ors. (2017) 5 SCC 579*, the school was entitled to exemption under Section 16(1)(b) of the Act of 1952. Once it was found that the employees of the school and establishment were entitled for exemption it would not be permissible to include the employees of the hostels and D-Ed college for computing the minimum number of the employees of the establishment. He submitted that in the review application as well as before the Tribunal it was pleaded that all the three institutions were distinct and separate and were not having any functional

integrality between them. In the light of the law laid down by the Honourable Supreme Court in *Yeshwant Gramin Shikshan Sanstha* (supra) the benefit under Section 16(1)(b) of the Act of 1952 ought to be given to all the three institutions and hence the order of Tribunal was liable to be set aside. He referred to the letter dated 20/05/2009 issued by the Social Welfare Officer to the Provident Fund Authority in which it was stated that the employees of the hostels were getting monthly honorarium and hence were not liable to be covered under the Act of 1952. Though the ground as regards absence of functional integrality was raised before the Tribunal the same was not considered. He therefore submits that the orders impugned were liable to be set aside.

4. Shri H. N. Verma, learned counsel for the respondent No.1 supported the impugned order. According to him even if the law as laid down in *Yeshwant Gramin Shikshan Sanstha* (supra) was to be applied to the staff of the school which employed 12 employees, the staff of the three hostels and the D.Ed college were 22 and therefore it could not be said that the appellant was not entitled to be covered under the Act of 1952. He further submitted that no specific plea was raised as regards absence of functional integrality between the hostels and the D.Ed college and therefore no finding in that regard came to be recorded by the authorities under the Act of 1952. The learned Single Judge was justified in maintaining the

orders as passed and hence no interference with the same was called for. He therefore submitted that the appeal was liable to be dismissed.

5. We have heard the learned counsel for the parties and we have perused the material on record. The fact that about 34 staff members were engaged at the hostels, D.Ed college and the high school is not disputed. It is further undisputed that the high school receives grant-in-aid from the State Government and hence the staff of 12 engaged therein is entitled to the benefit under the CPF scheme. In *Yeshwant Gramin Shikshan Sanstha* (supra) the Honourable Supreme Court has held that where the establishment receives 100% grant-in-aid, the mere fact that some employees were working on part-time basis would not be a reason to deny the benefits flowing from the provisions of Section 16(1)(b) of the Act of 1952. The exemption would be for the establishment as a whole and for all purposes. The aforesaid observations support the submission of the learned counsel for the appellant insofar as the staff of the high school is concerned. It is however seen that the appellant also runs three hostels and D.Ed college wherein about 22 employees are engaged. If the appellant seeks to enjoy benefits flowing from Section 16(1)(b) of the Act of 1952 which are admissible to the high school, it would have to indicate that there was no functional integrality between the high school, D.Ed college and the three hostels. We find from perusal of the record that before the Tribunal a ground

was raised by the appellant that the hostels run were separate and they could not be considered alongwith the educational institutions being the high school and D.Ed college. Similarly a communication from the Social Welfare Officer dated 20/05/2009 addressed to the Assistant Provident Commissioner also does not appear to have been adverted to. It is found that in the light of the law now laid down in *Yeshwant Gramin Shikshan Sanstha* (supra) it would be necessary to consider the aspect of absence of functional integrality between the high school, hostels and D.Ed college as sought to be urged by the appellant. Since this aspect has not been considered by the Authorities and as the same goes to the root of the matter, we inclined to direct the Provident Fund Commissioner to consider this aspect afresh after taking into consideration the law laid down in *Yeshwant Gramin Shikshan Sanstha* (supra).

6. As regards the findings recorded by the learned Single Judge that the plea of absence of functional integrality was not raised, we find that such plea was raised but before the Appellate Tribunal. Since it is found necessary to examine this aspect, the interests of justice require fresh adjudication by the Provident Fund Commissioner.

Accordingly, the orders passed by the Assistant Provident Fund Commissioner under Section 7-A of the Act of 1952, the order passed by the Tribunal on 20/09/2011 as well as the order passed in Writ Petition

No.2489/2012 are set aside. The proceedings are remanded to the Provident Fund Commissioner who shall consider the matter afresh in the light of the observations made herein above. The parties are at liberty to place on record additional material if they so desire. The proceedings shall be decided on its own merits without being influenced by any observations made in this order. The authorised representative of the appellant shall appear before the Provident Fund Commissioner, Nagpur on 29/11/2021. The fresh adjudication be completed expeditiously and preferably within three months from that date. All points in that regard are kept open.

The Letters Patent Appeal is allowed in aforesaid terms with no order as to costs.

JUDGE

JUDGE

Asmita