

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9107 OF 2021
IN WP/8296/2021 WITH WP/8296/2021

SMT. SHARADCHANDRIKA SURESH PATIL INSTITUTE OF
TECHNOLOGY POLYTECHNIC THROUGH IT'S PRINCIPAL AND
ANOTHER
VERSUS
THE REGIONAL PROVIDENT FUND COMMISSIONER – II AND
OTHERS

Mr.B.R.Waramaa, Advocate for the applicant.
Mr.N.K.Choudhari, Advocate for respondent Nos. 1 and 2.
Mr.Mohit S.Shah h/f Mr.S.P. Brahme, Advocate for respondent Nos. 3
and 4.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 24, 2022

PER COURT :

1. The petitioner No.1 is an Educational Institution, which is run by petitioner No.2 Society and they have invoked the jurisdiction of this Court being aggrieved by the order passed by the Assistant Provident Fund Commissioner on 22/06/2021, in the matter of proceedings u/s 7(a) of the Act of 1952 in respect of the Institute.

2. Perusal of the impugned order will reveal that this order has been

passed in Part, covering 2 complainant/employees whereas as far as the enquiry qua the other proposed employees who are also interested in making a similar demand in respect of which an open enquiry was initiated by issuing a public notice on 21/06/2021 is concerned, the same is not yet concluded.

The findings would reveal that the enquiry is partly closed qua the two employees and the remaining part of enquiry is continued.

3. The learned counsel for the petitioner, on being confronted with the provision of appeal as contained in Section 7(i) of the Act of 1952, the learned counsel for the petitioner initially expressed his hesitancy, since, it is not a final order in the sense the entire proceedings are not concluded but only part of the enquiry has been concluded. In any case since there is no prohibition in challenging the said order passed under Section 7(a) qua the two employees though partially, an appeal is maintainable u/s 7(i) before the Appellate Authority, learned counsel for the petitioner seeks leave to withdraw this writ petition with permission to avail the said remedy. He, however, states that he shall reserve his liberty to bring before the Appellate Authority the subsequent events and the developments which would come in the

future enquiry which is continued u/s 7(a).

4. By reserving the aforesaid liberty, the petition is permitted to be withdrawn and disposed off as such. On the parties being relegated to the Appellate Authority, the interim stay granted by this Court to the impugned order dated 22/06/2021 needs to be vacated since the learned counsel for the respondents makes a statement that the amount has already been recovered and the disbursement has been stayed. Since the employees' entitlement has been ruled out by the First Authority, that the disbursement shall be permitted in their favour subject to an undertaking being submitted by them that if the Appellate Authority reverse the finding of the First Authority, they shall remit the amount to the petitioner / Management. The undertaking shall be submitted before the Appellate Authority, upon an appeal being filed before the disbursement of the amount.

Since the writ petition is withdrawn, the Appellate Authority may consider the period consumed by the petitioner in prosecuting the writ petition, on an application being made seeking condonation of delay.

(BHARATI H. DANGRE, J.)