



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 2287 OF 2011

The Vidarbha Youth Welfare Society's
Dental College and Hospital,
Tapowan Road, Amravati – 444602 (M.S.),
through its Dean Dr. Vandana w/o Anil Dhamorikar.

...PETITIONER

Versus

- 1] The Assistant Provident Funds Commissioner,
Employees' Provident Fund Organization,
Sub-Regional Office, Plot No. 15-B,
Raghuraj Arcade, Civil Lines, Akola.
- 2] The Presiding Officer, Employees Provident Fund
Appellate Tribunal (Ministry of Labour and Employment)
Corp. II, 4th Floor, Laxmi Nagar,
District Centre, Laxmi Nagar, Delhi,
Camp. Nagpur.

...RESPONDENTS

Shri R.D. Bhuihar, Counsel for the petitioner.
Shri H.N. Verma, Counsel for respondent no.1.

CORAM : ANIL L. PANSARE, J.

DATE : OCTOBER 14, 2024

ORAL JUDGMENT :

Having heard at length, the contentious issue is whether stipendiary allowance, paid to interns, would attract contribution of provident fund.

- 2] The petitioner's contention is that in terms of the

internship programme published by the Dental Council of India, until the students complete internship of one year, they are not entitled for degree of BDS. Under the scheme, the students have to undergo internship programme of one year at the Dental College duly recognized and approved by the Dental Council of India for the purpose of imparting education and training to dental graduates in the country. The interns are paid stipendiary allowance during the period of internship not extending beyond the period of one year. According to the learned Counsel for the petitioner, stipendiary allowance will not attract contribution of provident fund.

3] The authorities below have directed the petitioner to contribute to the stipendiary allowance on the ground that the petitioner establishment is seen engaging professionals as interns and is paying them remuneration under the head 'stipend'.

4] It is not known as to on what basis this finding has been rendered by respondent no.1 – Assistant Provident Funds Commissioner. The learned Counsel for respondent no.1 submits that this finding has been rendered on the basis of

financial documents filed by the petitioner.

5] On this point, the learned Counsel for the petitioner submits that the documents indicate payment of stipend to the interns, which cannot be said to be the documents indicating engaging professionals as interns.

6] Thus, it appears that the issue of payment of stipend to interns has been not properly addressed by the authorities below. To that extent, the orders impugned are liable to be quashed and set aside. So far as contribution to fund for the payment of wages paid to doctors employed by the petitioner establishment is concerned, the learned Counsel for the petitioner submits that report dated 30/9/2008, submitted by the Enforcement Officer upon which the aforesaid finding has been rendered, was not supplied to the petitioner and, thus, principles of natural justice were not followed.

7] On this point, the learned Counsel for respondent no.1 has invited my attention to roznama dated 1/10/2008 noted in the proceedings before respondent no.1. It is noted that the report dated 30/9/2008 was shown to Shri S.S. Giri,

who appeared for the petitioner. He agreed to the dues payable in terms of the report. Accordingly, the learned Counsel for respondent no.1 submits that sufficient opportunity was given.

8] It is the contention of the petitioner that showing report of Enforcement Officer is not sufficient compliance of principles of natural justice. I do not find any substance in the aforesaid submission inasmuch as the petitioner has not pointed out any provision that would require respondent no.1 to furnish copy of report to the petitioner. In absence of such provision, it will be not permissible to argue that showing report of Enforcement Officer will be not sufficient compliance of principles of natural justice.

9] The roznama indicates that not only report was shown to the petitioner but Shri Giri agreed that the dues mentioned in the report were payable. The matter was then closed on 1/10/2008. The order was, however, passed on 14/10/2018. When enquired as to whether the petitioner has, in the intervening period, made request to seek copy of report or to take a different stand than what has been noted in roznama dated 1/10/2008, the learned Counsel for the

petitioner answered in the negative. Thus, no grievance was ever made before the respondent no.1 of not supplying the said report.

10] It is, thus, evident that a conscious approval was given to the report of the Enforcement Officer. It will be, therefore, impermissible for the petitioner to argue that principles of natural justice were not adhered to. The contention on the aforesaid point is accordingly rejected.

11] Resultantly, the writ petition is partly allowed. Order dated 18/2/2011 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, Delhi, Camp – Nagpur, in A.T.A. No. 507/9/2009, so also order dated 15/10/2008 passed by the Assistant Provident Fund Commissioner, Sub-Regional Office, Akola, are quashed and set aside, to the extent of the authorities directing the petitioner establishment to contribute provident fund against the payment of stipendiary allowance to the interns. The matter is remanded back to respondent no.1 for consideration afresh on this point.

12] The parties shall appear before respondent no.1 on 12/11/2024.

13] Rule is disposed of in the aforesaid terms. No order as to costs.

CIVIL APPLICATION NO. 1595/2024

14] The learned Counsel for the respondents submits that 40% of the disputed amount has been inadvertently deposited in this Court.

15] Having heard both sides, there appears to be no order directing the respondents to deposit 40% of the disputed amount. It further appears that the petitioner has deposited 40% of the disputed amount before the First Appellate Authority. The learned Counsel for respondent no.1 submits that the said amount is intact and respondent no.1 has not touched the same.

16] In view of above and for the reasons set out in the application, the same is allowed, as prayed for. The amount be released in favour of respondent no.1 along with interest accrued thereon, if any, upon an application made by

respondent no.1 to that effect.

Sumit

JUDGE