IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3077/2011

Bhartiya Seva Acharya Education Society .Vs. Union of India and Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. R. S. Parsodkar, Advocate for petitioner.
Mr. P. A. Teni, Advocate for respondent No.3.
Mr. H. D. Futane, A.G.P. for respondent No.4.
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CORAM : ANIL L. PANSARE, J.
DATE : DECEMBER 16, 2024

On 25.11.2024, following order was passed:

"Learned counsel for the petitioner has tendered across the bar additional affidavit contending that respondent nos. 1 to 3 have no jurisdiction to recover the provident fund dues. Same is taken on record.

Having heard for some time, learned counsel for the petitioner submits that the issue involved is no more res integra. The coordinate Bench of this Court in the case of Balasaheb Dempurikar Vidhya Mandir, Umari Vs. State of Maharashtra [2017(3) Mh.L.J. 825] has held thus :

> *"21. As a result, all such employees (except those who have opted for pension) working in aided or unaided schools are mandated to subscribe to the contributory provident fund under the Contributory Provident Fund Rules (Bombay). Consequentially, keeping in view that the State Government has administrative control even if a school or college is not operated on grant-in-aid basis, Rule 20(1) would make it mandatory for every employee, who has not opted for pension, to subscribe to the C.P.F. notwithstanding whether he is working full time or part time in an aided or unaided school.*

22. In all these matters before the Court, the periods for which recovery is initiated by the respondent A.P.F.C. is post introduction of Rule 20 under the 1981 Rules, which were brought into effect on 16-7-1981. These rules have been framed under Section 16(1) and (2) of the M. E. P. F. Act, 1977. In this view of the matter, it is quite evident that after the introduction of Rule 20 from 16-7-1981, the authority under the E. P. F. Act would have no jurisdiction to recover P. F. dues in relation to every employee who has subscribed to the C.P.F. If any period of service for which P. F. Contributions are due from any educational institution prior to 16-7-1981, the P. F. Authorities under the E. P. F. Act could exercise jurisdiction for recovering the dues.

23. In the light of the above, these petitions are allowed. The impugned orders issued by the competent authority under the E. P. F. Act covering the periods after 16-7-1981, stand quashed and set aside. Wherever such recoveries pertain to the periods prior to the said date 16-7-1981, the E. P. F. Authorities could exercise jurisdiction.

24. However, before parting with these matters, I deem it necessary to issue directions to the State Government/ respondent No.1 herein to cause an enquiry into the C.P.F. Contributions of all these petitioners/institutions and all such managements in the State of Maharashtra considering the effect of Rule 20(1) of the 1981 Rules only to ensure that contributions of all employees under Rule 20(1) are not due and pending. Since provident Fund is a part of beneficial legislation, it would be necessary for the State Government to ensure that no recoveries or dues escape their attention. The competent department

> *of the State Government would therefore be at liberty to address each of these petitioners and all such institutions in the State and call for information as it may deem necessary so as to scrutinize and assess whether any dues are outstanding under Rule 20(1) of the M.E.P.S. Rules. After considering the replies of these petitioners and such managements, respondent No.1 would be entitled to pass necessary orders for ensuring the payments under the C.P.F. This is intended to ensure the scrupulous compliance of Rule 19 and 20 of the MEPS Rules."*

There is no dispute that the employees under question have subscribed to C.P.F. The coordinate Bench has issued directions to the State Government to cause an enquiry into the C.P.F. Contributions of all the petitioners therein/institutions and all such managements in the State of Maharashtra considering the effect of Rule 20(1) of the 1981 Rules only to ensure that contributions of all employees under Rule 20(1) are not due and pending. Thus, the State Government was directed to cause an enquiry.

Learned Assistant Government Pleader seeks time to take instructions. Learned Assistant Government Pleader shall file affidavit on this point.

Stand over to 2-12-2024."

2. In response, the respondent No.4 – Education Officer (Secondary), Zilla Parishad, Nagpur has filed affidavit stating therein that since the year 2005, National Pension Scheme (NPS) has been introduced and the employees working in a school which is admitted to 100% grant-in-aid are the members of the GPF/NPS scheme and the State Government has been regularly deducting a specified amount from the salary as part of contribution. Respondent No.4 has further stated that the

employees of the petitioner-society are also members of GPF/NPS scheme and the contribution is regularly deducted.

The affidavit is taken on record.

3. The contentions is that in such an eventuality, the authorities under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the "EPF Act") have no jurisdiction to recover the dues because the employees of the private schools, which are admitted to grant-in-aid, are excluded in terms of rule 20 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the "MEPS Rules"), which reads thus:

> *"20.Provident Fund.*
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> *(1) Every employee (not being an employee who has opted for pension) of an aided or unaided school working on a full time basis or every employee employed on part-time basis in more than one school run by the same Management and doing full-time load of work in these schools, shall subscribe to the Contributory Provident Fund under the Contributory Provident Fund Rules (Bombay) as in force from time to time.*
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> *(2) Every employee of an aided private secondary school working on a full time basis who was appointed before the 1st April 1966 and who had exercised in writing his option for a Contributory Provident Fund Scheme shall subscribe to that Fund as per rules made by Government and are in force in this behalf."*

4. The aforesaid rule has been considered by Coordinate Bench of this Court in *Balasaheb's* case (supra) and a categorical finding is rendered that the authority under the EPF Act, would

have no jurisdiction to recover provident fund dues in relation to the employees who have subscribed to this CPF.

5. Counsel for respondent Nos.2 and 3 failed to point out any judgment, order or provision which is contrary to the law laid down by the Coordinate Bench.

6. Resultantly, it will have to be held and accordingly it is held that the authorities under the EPF Act herein had no jurisdiction to recover dues. The order impugned, therefore is unsustainable.

7. The writ petition is partly allowed. Impugned order dated 22.02.2011 passed by respondent No.2 in F.No.ATA No.846/9/2007, is quashed and set aside. The Education Officer shall, however, examine whether the employees working with the petitioner-society have subscribed to the CPF under the EPF Act as provided under Rule 20 of the MEPS Rules and proceed to take appropriate steps in this regard.

The amount deposited by the petitioner with respondent Nos.1, 2 and 3 will be transferred to respondent No.4, who shall, after examining the issue, either refund the amount back to the petitioner society or to remit it to the CPF, as the case may be.

No order as to costs.

(Anil L. Pansare, J.)

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