IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18028 OF 2024

Sukesh Bhowal ....Petitioner
V/S
Union of India
through Secretary
Ministry of Labour and Employment
New Delhi. & Ors. ....Respondents

Mr. Shadab Jan with Mr. Navin Arora and Ms. Sulakshana Ghule *for the Petitioner.*
Ms.Anjali Helekar through video conferencing with Ms. Ashtha Arya *for Respondent No.1-UOI.*
Ms. Payoja Gandhi *for Respondent No.2-RPFC.*
Mr. Kiran Bapat, Senior Advocate with Mr. Ritik Gupta i/b Ms. Suvarna Joshi *for Respondent No.3-Bank.*

CORAM: SANDEEP V. MARNE, J.
DATE : 27 MARCH 2025.

P.C.:

1. Heard the learned counsel appearing for the parties.

2. The Petition is filed for transfer of accumulated Provident Fund Contribution in the account of the Petitioner with DCB Bank Limited from PF Account No.07771 maintained with DCB Bank Limited to the PF Account Number of his new employer

Motilal Oswal Home Finance Limited. Provisions of sub-section (2) of Section 17A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**the EPF Act**) is relied upon. The said provision essentially applies where an employee employed in an Establishment, to which the Act does not apply, leaves his employment and obtains reemployment in another establishment to which the EPF Act applies. It is the case of the Petitioner that the EPF Act did not apply to DCB Bank Limited whereas the EPF Act applies to his new employer. This is how it is claimed that on mere expression of desire by the Petitioner for transfer of PF contribution, the Respondent-EPFO is bound to transfer PF Contribution from old employer to the new employer.

3. The request is apparently rejected on the ground that the Fund was being maintained by DCB Bank Limited in violation of Rule 4(ea) of Part-A of Fourth Schedule of the Income Tax Act and various Notifications issued from time to time under the Finance Act No.21 of 2006 till Act No.17 of 2013.

4. *Prima facie* I am of the view that the real key to resolve the issue is whether Respondent No.3-DCB Bank Limited is covered by the EPF Act or not. Reliance is placed on Notification dated 10 February 2016 which provides thus:

> "**S.O. 444(E)**.- In exercise of the powers conferred by clause (b) of sub-section (3) of section 1 read with section 16 of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies

> that the said Act shall apply to all banks employing twenty or more number of persons as a class of establishment in respect of those employees who are not entitled to the benefit of Contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government or by the respective banks established under the Banking Regulations Act, 1949 (10 of 1949).

5. Thus the provisions of the EPF Act do not apply to Banks where the employees are entitled to the benefit of contributory provident fund or old age pension in accordance with the Scheme or Rules framed either by the Central Government or the State Government or by the respective Banks. It is the case of Respondent No.3-DCB Bank Limited that its employees were governed by Contributory Provident Fund established in accordance with the Bank's own Scheme and that therefore the provisions of the EPF Act do not apply to it. Therefore the real question that needs to be decided in the present Petition is whether the provisions of the EPF Act applies to Respondent No.3 in view of Notification dated 10 February 2016. The reason for rejection of request of the Petitioner about PF trust of Respondent No.3 functioning without coverage of provisions of EPF Act by violating the provisions of Income Tax Act does not *prima facie* appear to be correct.

6. Ms. Gandhi, the learned counsel appearing for Respondent No.2-EPFO would submit that since the Petition involves broader policy decision, reference is made to the head office for seeking

appropriate instructions. She prays for time to file Reply. It would be appropriate that even the Respondent No.1-Union of India files its reply on the issue involved in the present Petition.

7. Leave is also granted to Respondent No.3 to file Affidavit-in-Reply to demonstrate as to how provisions of the EPF Act do not apply to it. Let Affidavits-in-Reply be filed within a period of three weeks.

8. List the Petition under caption 'for circulation' on **28 April 2025**.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM
Digitally signed by SUDARSHAN RAJALINGAM KATKAM
Date: 2025.03.29 13:02:47 +0530