

(2017) 02 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 5303 of 2016

Shree Sai Samarth Nagari Sah Patsanstha Ltd.

APPELLANT

Vs

Employees Provident Fund Organisation

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) LabLR 484

Hon'ble Judges : T.V. Nalawade and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. S.S. Chapalgaonkar, Advocate, for the Petitioners; Mr. K.B. Choudhary, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

T.V. Nalawade, J.(Oral)—Rule, made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

2. These petitions are filed by the petitioners to challenge the order passed by the respondent, by which the petitioners are directed to supply necessary record in respect of Pigmy agents to ascertain liability of the petitioners to pay contribution under the provisions of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952.

3. The learned Counsel for the petitioners tenders on record a copy of the decision in the case of the Pachora Peoples" Cooperative Bank Ltd. v. The Employees Provident Fund Organisation, 2014 (3) All.M.R. 658, wherein the point raised in this petition was considered by the Division Bench of this Court. The learned Counsel for the petitioners also tenders a copy of the judgment dated 11.01.2017 in Review Application No. 186 of 2016, which was arising out of the aforesaid decision. In the judgment dated 11.01.2017, in paragraph 32, following guidelines have been given :

"(a) The EPF Authorities should collect necessary documents by inspection of

records of the Establishment/Industry.

(b) A direction to the Management to produce the documents as may be found necessary, should be issued whenever the EPF Authorities realize that the Management is holding back certain documents.

(c) The appointment orders/contract letters or agreements in between the Banks and the pigmy gents/deposit collectors should be made available for scrutiny and should be taken into consideration.

(d) Based on the above documents, the EPF Authorities must adjudicate on the following aspects :

(i) Whether, the contracts/appointment orders have a semblance of employer-employee relationship ?

(ii) Whether, there is supervision, control and direction of the Bank over such agents ?

(iii) Whether, these agents are under an obligation to work only for a particular Bank or it's Branches ?

(iv) Whether, these agents are permitted to work elsewhere or undertake any other business, job, profession or calling ?

(v) Whether, such agents are primarily dependent upon the work of collecting deposits for a particular Establishment ?

(e) Interrogate the pigmy depositors to elucidate information about their exact nature of duties.

(f) Based on the documents and an analysis upon considering the above mentioned factors, the APFC will have to arrive at a conclusion supported by reasons that such pigmy agents can be termed as "workmen" and share employer-employee relationship with the Bank and are being paid wages disguised as commission. The said commission amount would then be termed as basic wages under Section 2(b) of the EPF Act."

4. In view of these circumstances, this Court holds that present petition can be decided in the same terms.

5. The respondents are directed to hold an enquiry in view of the aforesaid guidelines and make order accordingly.

6. The Writ Petition stands allowed and disposed of in the aforesaid terms. Rule made absolute accordingly.