



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2039/2024

M/s Wardha Nagri Sahakari
Adhikosh Maryadit Bank,
Wardha, through its Chief
Executive Officer, Head office
at “Madhav Bhavan”, Devi
Ashtabhuj Mandir Chowk,
Dhantoli, Wardha – 442001.
Email-Id wns_bank@rediffmail.com

... PETITIONER

...VERSUS...

Employees Provident Fund
Through its Regional
Provident Fund Commissioner-I,
Nagpur Office at Regional
Provident Fund Office 132-A,
Redge Road, Raghuji Nagar,
Nagpur- 440009
Email-id ro.nagpur@epfinddia.gov.in

...RESPONDENT

Mr. T.D. Mandlekar, Advocate for petitioner
Mr. Rajat Maheshwari, Advocate for respondent V.C.

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 24/01/2025

DATE OF PRONOUNCING THE JUDGMENT: _____

JUDGMENT

. Rule. Rule made returnable forthwith. Heard learned Counsel for both the parties.

2. The present petition is filed by the petitioner which is a registered cooperative society covered under the provision of Employment Provident Fund Act, 1952 (for brevity 'the EPF Act') and the provision under the PF code No. NA/NAG/18860 with effect from 01.11.1978. The bank is regulated by the Banking Regulation Act 1949 and is also registered under Co-operative Societies Act. The petitioner filed the present petition as it is aggrieved by the impugned order passed in Diary No.96/2019 by the Regional Provident Fund Commissioner, Nagpur on 28.12.2023 in the matter of proceedings under Section 7-A (i)(a) of the EPF Act, by which it is held that the provisions of Section 6 of the EPF Act are applicable to the present petitioner. The petitioner has preferred the statutory appeal under section 7-A (i)(a) of the EPF Act before the Central Government, Industrial Tribunal, Nagpur, (CGIT) (Appellate Tribunal), on 11.03.2024, which is pending for want of Presiding Officer. Therefore, the present petition is filed.

3. It is contention of the petitioner that the impugned order dated 28.12.2023, the Regional Provident Fund Commissioner, Nagpur held that the provision of Section 6 of the EPF Act are applicable to the petitioner. It is erroneously held that the Pygmy Agents or Daily Deposit Collectors who are working as Commission Agents, getting the commission from the bank are in fact eligible for the advantages of the EPF Act. It is further held that the bank has “Master-Servant” or “employer-employee” relationship with the pygmy agents. It is contended that the said observation and finding are absolutely illegal in the light of the settled position of law. Petitioner was issued notice for determination of dues in respect of Daily Deposit Collectors or pygmy agents on 12.01.2009. The petitioner challenged the said notice by filing Writ Petition No.1106/2009 before this Court. There was stay to the “coercive recovery” of the amount determined by the Provident Fund Commissioner in section 7-A enquiry proceedings. After completion of enquiry under Section 7-A (i)(a) of the EPF Act an assessment to the tune of Rs.1,13,38,749/- was made for the period from 1976/77 to 2009/2010, vide order dated 01.07.2010. The Writ Petition No.1106/2009, decided on 25.04.2019 and the order

passed by the Regional Provident Fund Commissioner, Nagpur came to be quashed and set aside and remanded the matter back to the Regional Provident Fund Commissioner, Nagpur for holding fresh enquiry based on parameters laid down by the division bench of the Bombay High Court in the review case of Pachora Peoples Cooperative Bank Limited Versus EPFO in Writ Petition No.5086/2011 decided on 07.02.2014.

4. It is submitted that the impugned order by PF Commissioner is not in accordance with the judgment passed by this Court in Pachora Peoples Bank in Writ Petition No.5086/2011. It is submitted that as per the direction, fresh enquiry was directed to be conducted. Therefore, notice was issued to the petitioner on 28.05.2019, which was duly replied. It is submitted that there is no relation between employer and employee between the bank and Daily Collectors. The nature of Daily Collection Agent is that of a Commission Agents only and they are being paid commission on the basis on the deposit collected by them in the percentage, which is revised from time to time. By no stretch of imagination, these daily collection agents are the employees of the bank and there is no

employer-employee relationship. As per the nature of the work, the agents are supposed to work from their respective places and are not required to attend the Bank daily or even to sign any Attendance Register. They are not receiving any salary from the bank.

5. In view of the definition in EPF Act under section 2F, “employee” means any person who is employed for wages/salary in any kind of work manual, or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor or in connection with work of the establishment. Section 1(3) of the EPF Act applies to every establishment in which 20 or more persons are employed, Sub Section (1) of Section 16 enlists those establishments which are excluded from the applicability of the EPF Act.

6. The learned Counsel for the petitioner relied on the judgment passed by this Court in Writ Petition No.5615/2007 wherein the present petitioner Bank was the petitioner. In the said

petition, Wardha District Co-operative Bank Employees Union filed application vide BIR No.10/2003 instituted under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946. Their contention in the said application was that 69 Bank employees persons as Daily Deposit Collectors (DDC) whose service conditions are governed by the Model Standing Orders framed under the BIR Act. They contended that the work performed in his manual, clerical and skilled akin to the duties discharged by the Head Clerk. They are completed 240 days continuous service and are paid commission of 3% of the amount of deposit collected. The Union contends that the commission of 3% was reduced by the Bank to 2.25% without issuing notice to the Union.

7. As notice issued was not responded, they approached the Labour Court seeking direction that DDCs be made regular and permanent and be paid wages at par with wages paid to the Head Clerk. The Bank denied employer-employee relationship and also contended that the DDCs are neither employees of the Bank nor the members of the Union. The certified standing orders are not applicable to DDCs. The working hours of the DDCs are not

controlled or regulated by the Bank. The DDCs are not required to obtain sanction to the leave. The nature of work performed by the DDCs is not clerical and all that is expected of the DDCs is to collect the amount from the customers and to deposit the same in the bank.

8. The Labour Court after considering evidence held that the DDCs are employees of the Bank within the meaning of Section 3(1)3 of the BIR Act. It is further held that the reduction of the commission paid to the DDCs from 3% to 2.5% is an illegal change. It is further held that the DDCs are not regular and permanent employees nor it is proved that the nature of work performed is akin to the work performed by regular employees of the Bank and declined to grant the relief of permanency or regularization or parity of wages. Bank as well as DDCs preferred appeal before the Industrial Court vide Appeal No.01/2006 and 03/2006 by the Bank and Union respectively. Both the appeals came to be decided by the common order by the Industrial Court. The appeal filed by the Bank is rejected. Appeal filed by the Union is partly allowed and passed following orders.

“3) The Respondent-Bank is directed to withdraw illegal change made by it and to reimburse the amount of difference of the commission charges to the employees concerned and to treat the employees concerned (DDCs) enlisted in Exh.32 as its employees by paying them salary in the pay-scale of Clerk from the date of filing of Application (BIR) No. 10/2003, i.e. from November 2003 and to absorb them preferentially in the post of Clerk, as per seniority amongst them, upon availability of the posts in terms of order above.”

9. The said order was challenged by the Bank vide Writ Petition No.5615/2007 and Union vide Writ Petition No.4872/2010. This Court relied on the judgment passed by the Hon’ble Supreme Court in ***Indian Bank Association v. Workemn of Syndicate Bank and others reported in (2001) 3 SCC 36***. While dealing with the direction to absorb Deposit Collectors as regular workmen, the Hon’ble Apex Court held as under:

“28. Mr. Nageshwar Rao is right in his submission that the concession was not binding on his clients. However, what has been conceded has been correctly conceded. No question arose of directing absorption of the Deposit Collectors as regular workmen. No such demand had been made and, therefore, there could have been no such direction. Such direction were beyond the reference. Even otherwise, the

*question of absorption would be fully covered by an authority of this Court in the case of **Union of India v. K.V. Baby**. In this case it has been held that persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work. It has been held that the mode of selection and qualifications are not comparable with those of the employees, even though the employees may be doing similar works. In the present case, not only are the modes of selection and qualifications not comparable, but even the work is not comparable. The work which the Deposit Collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there was also no question of the Deposit Collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks.”*

10. This Court held that the Hon’ble Apex Court noticed that no demand of absorption was made, even otherwise there was no question of absorption or the Deposit Collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the bank. The Hon’ble Apex Court emphasized the difference between persons who are engaged on the basis of individual contracts to work on commission and regular employees doing similar work, their mode of selection, the qualification and

the nature of work. It is further held by this Court that once it is held that the DDCs cannot be equated with regular and permanent employees in view of the nature of work performed, the qualification and the mode of selection the question of conferring permanency on the basis of the applicability of Model Standing Orders 4B does not arise. Model Standing Orders 4B means that a temporary employee who has put in 240 days uninterrupted service in the aggregate during the period preceding 12 calendar months shall be made permanent. Temporary employee is defined as an employee who has been appointed for a limited period for work which is of an essentially, temporary nature or who is employed temporarily as an additional employee in connection with temporary increase in work of a permanent nature. The underlying logic is that if the work continues for uninterrupted period of 240 days, the work would not be temporary nature nor would the engagement be necessitated by temporary increase in work of a permanent nature.

11. This Court after hearing the matter finds that the Industrial Court in appeal directs the Bank to pay the DDCs salary

in the pay scale of Clerk and to absorb them preferentially in the clerical cadre upon availability of the posts is unsustainable. Accordingly, petition filed by the Bank is partly allowed. The judgment rendered by the Labour Court was confirmed and the petition preferred by the Union was dismissed.

12. The learned Counsel for the petitioner Dr Mandlekar also relied on the judgment passed in Writ Petition No.5154/2016 along with other connected petitions, wherein this Court observed in para 21 as under:

“21. In this context, the judgments of the Division Bench of this Court in the case of Pachora Peoples' Co-op. Bank Ltd. v. Employees Provident Fund Organization (supra) assume significance, because a perusal of the specific parameters laid down by the judgment of the Division Bench of this Court in review shows that the Authorities under the Act of 1952 have been directed to make enquiry based on material including appointment orders/contract letters/agreement between the banks and the collection agents, as also to enquire as to whether the banks have been paying wages disguised as commission to the collection agents. Thus, the orders of remand passed by the Division Bench of this Court do not lead to the conclusion that the banks have been held to be liable or covered under the provisions of the Act of 1952, but detailed enquiry

has been directed to be conducted by the Provident Fund Authorities under the Act of 1952 to ascertain whether the banks could be covered under the provisions of the Act of 1952.”

The said parameters were confirmed by the Hon’ble Apex Court in the matter of ***Nashik Merchant Cooperative Bank Ltd v. The Regional Provident Fund Commissioner II.***

13. The order passed by the High Court was set aside and the matter was remanded for a *de novo* consideration by EPF Authorities in the light of parameters laid down by the High Court in its order of review dated 11.01.2017 in Pachora Peoples’ Co-operative Bank Ltd. As such, petition stand dismissed.

14. It has been categorically stated by the Hon’ble Apex Court that ***“we are of the view that the entitlement of the employees to be covered by the provisions of the Act of 1952 needs to be decided in the light of the aforesaid laid down parameters.”***

15. In light of the discussion and law position, this Court partly allowed all the petitions and all the cases remanded to the

Provident Fund Commissioner for undertaking enquiry under Section 7-A of the EPF Act on the parameters laid down by the Division Bench of this Court. In the case of Pachore Peoples' Cooperative Bank Ltd v. EPFO.

16. Learned Counsel also relied on *Pachora Peoples' Cooperative Bank Ltd. vs. The Employees Provident Fund Organization* along with application No.186/2016 in Writ Petition No.5086/2011 decided on 11.01.2017, wherein some parameters laid down for consideration by the EPF Authorities in paragraph No. 32 which reads as under:

“32.

"(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 agents/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.”*

17. The learned Counsel for respondents submitted that the petitioner is having an alternate remedy and he has already filed appeal before CGIT Nagpur and on merits also the petitioner has no case. It is submitted that after remand of the matters before the Regional Provident Fund Commissioner of this Court in Writ

Petition No.1106/2009, fresh enquiry under section 7-A on the basis of parameters laid down by the Division Bench was conducted. It is further submitted that appointment letters of pygmy agents were collected and verified.

18. The learned Counsel for respondents further submitted that in view of *Indian Banks Association Vs. Workmen of Syndicate Banks and Others, (2001) 3 SCC 36*, it is settled law that all deposit collectors called by various names including pygmy agents are workmen. He also placed reliance on *Pawan Hans Limited and others Vs. Aviation Karmachari Sanghatana and others (2020) 13 SCC 506*, that the definition of 'employee' in Section 2(f) of the EPF Act, 1952 is inclusive definition and includes contractual employees. He asserted that pygmy agents are contractual workers and claimed that there is no illegality in the order passed by the present respondents.

19. If the impugned order is perused, it appears that after remand, show cause notice is given and the appointment orders of the respective pygmy agents were collected. It also appears that

authority considered the terms and conditions in appointment letters. The pygmy agents were directed to furnish information on the questionnaire. This exercise is conducted by the commissioner to ascertain nature of work. The contention of the departmental representative is also appears to be considered. It appears that departmental representative submitted that on verification of the appointment letter issued by the Bank and the questionnaire submitted by the pygmy agents, it is crystal clear that the master servant relationship exist between the Bank and pygmy agents. It is also observed by the learned Commissioner that while deciding the applicability of the Act to this pygmy agent, it is imperative to look into the nature of the business of the establishment and its primary and principal activity carried on and the purpose of the pygmy agents in carrying out the business activity of the establishment and whether the work is in relation to the regular course of business of the establishment. It is held that there is commercial nexus with its general financial capacity and stability.

20. Learned Commissioner rightly held that while considering the expression “in or in connection with the work” in

section 2(f), (definition of employees), there must be some nexus, however, loose, between the establishment and the work of establishment. The EPF Act has the objective of labour welfare and the conceptual contract has the essence of the offer of work, acceptance of each other where the employee or such person agrees to produce the result under consideration for service in form of wages or cash. There is control of the bank over the work of pygmy agent. The learned Commissioner also considered master servant relationship has been held when the person so engaged with work of a Banking institution has commercial and financial significance in the Bank's regular course of business activity and is doing the work for monetary payment the work done is necessary to main operation of the establishment being a banking institution.

21. After considering all the contentions and testing the facts as per parameters laid down in the act the learned Commissioner came to the conclusion that Considering the submissions made by the Pigmy agents, Departmental Representatives and the Bank, it is concluded that The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is

applicable to the establishment on the basis of parameters laid down by the Division Bench of Hon'ble High Court in review in the case of Pachora Peoples Co-Op Bank Limited V/s EPFO. The Employee-Employer relationship or the Master-Servant bond under the provision of ACT, where the Bank is vitally dependable on the Pigmy agents to increase the number of account holders to the bank and the monetary contribution collected or deposited and concluded that the Pygmy Agents are not only crucial for smoothly running the Bank but also for successfully running the business. Hence, it can be concluded that the EPF & MP, Act 1952 is applicant to the Establishment, here the Bank, as the Bank-Pigmy Agent relationship is indicative of Master-Servant or Employer-Employee, is status in substance having regard to the economic realities irrespective of nomenclature devised. Considering the law position and the exercise taken up by the Commissioner to ascertain the nature of work its nexus with the main activity of bank, its control over the pigmy agent. It also appears from the questionnaire that detailed enquiry conducted as per parameters laid down in Pachora Peoples Co-operative Bank.

22. After going through the order of Commissioner and reasons mentioned above, I do not see any illegality in the order passed by the regional PF Commissioner in Diary No.96/2019 dated 21.12.2023. As such, Writ Petition is dismissed. No order as to the costs

(SMT. M.S. JAWALKAR, J.)

23. At this juncture, learned Counsel for the petitioner prays for six weeks' time to take appropriate remedy.

24. Though the learned Counsel for the respondent opposes the same, the effect of the order dated 28.12.2023 passed in Diary No.96/2019 by the Provident Fund Commissioner-I, Nagpur is hereby stayed for six weeks.

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare