

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 15680 OF 2017
[Arising out of Special Leave Petition
(Civil) No.12981 of 2016]

NASHIK MERCHANT COOPERATIVE
BANK LTD. . . . APPELLANT(S)

VERSUS

THE REGIONAL PROVIDENT FUND
COMMISSIONER II . . . RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 15681 OF 2017
[Arising out of Special Leave Petition
(Civil) No.15636 of 2016]

CIVIL APPEAL NO(S). 15682 OF 2017
[Arising out of Special Leave Petition
(Civil) No.15816 of 2016]

CIVIL APPEAL NO(S). 15683 OF 2017
[Arising out of Special Leave Petition
(Civil) No.16225 of 2016]

ORDER

1. Leave granted in all the Special Leave Petitions.
2. The challenge in this group of appeals is to the order of the High Court

of Bombay holding that the Pigmy Deposit Collectors employed by the appellants - Banks are employees within the meaning of the definition in the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act of 1952") and, therefore, are entitled to the benefits under the Act of 1952.

3. The order of the High Court taking the aforesaid view seems to be primarily based on an earlier decision of the High Court dated 7th February, 2014 in the case of The Pachora Peoples' Co-op. Bank Ltd. vs. The Employees Provident Fund Organization (Ministry of Labour, Govt. of India) [rendered in Writ Petition No.5086 of 2011 (Aurangabad Bench)]. It has been brought to the notice of the Court by the learned counsels for the appellants that the decision in The Pachora Peoples' Co-op.

Bank Ltd. (supra) was subjected to a review before the High Court. Though the review petition was dismissed, a view was taken by the High Court that as hundreds of such disputes/cases are pending before the EPF Authorities and the High Court, certain parameters should be laid down by the High Court to govern the exercise of power in this regard by the EPF authorities under the Act of 1952. The High Court on a consideration of the matter deemed it proper to lay down the following parameters:

- "(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."

4. As in the present case, the
judgment of the High Court impugned in
these appeals does not indicate
consideration of any of the aforesaid

parameters and the High Court itself felt that the matter needs to be dealt with by reference to specific parameters noticed above, 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 tested in the light of the aforesaid laid down parameters. We, therefore, are of the view that in the facts of the present case it would be proper to set aside the order of the High Court and remand the matters for a *de novo* consideration by the EPF Authorities in the light of the parameters laid down by the High Court in its order of review dated 11th January, 2017 in *The Pachora Peoples' Co-op. Bank Ltd.* (supra), as extracted herein above.

5. The EPF Authorities under the Act of 1952 would be at liberty to take a

decision afresh in the matter(s) after hearing the contesting parties who will be at liberty to urge all contentions as may be available in law.

6. With the aforesaid directions and observations, the appeals shall stand disposed of.

.....,J.
(RANJAN GOGOI)

.....,J.
(ABHAY MANOHAR SAPRE)

.....,J.
(NAVIN SINHA)

NEW DELHI
OCTOBER 05, 2017

ITEM NO.1

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 12981/2016
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 16-02-2016
IN WP NO. 9634/2011 PASSED BY THE HIGH COURT OF JUDICATURE AT
BOMBAY)

NASHIK MERCHANT COOPERATIVE BANK LTD.

PETITIONER(S)

VERSUS

THE REGIONAL PROVIDENT FUND COMMISSIONER II

RESPONDENT(S)

WITH

SLP(C) NO. 15636/2016 (IX)

SLP(C) NO. 15816/2016 (IX)

SLP(C) NO. 16225/2016 (IX)

Date : 05-10-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

HON'BLE MR. JUSTICE NAVIN SINHA

For parties:

Mr. C.U. Singh, Sr. Adv.

Mr. Aniruddha A. Joshi, Adv.

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Mr. P. Srinivasan, Adv.

Mr. J.P. Cama, Sr. Adv.

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Mr. Amol V. Deshmukh, Adv.

Mr. Avinash K. Jalisatgi, Adv.

Mr. Vinay Navare, Adv.

Ms. Gwen Kartika, Adv.

Mr. Abha R. Sharma, AOR

Mr. Harsh V. Surana, AOR

Mr. Judy James, AOR

Mr. Vijay Prakash, Adv.

Mr. Abid Ali Beeran P., Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the
signed order.

[VINOD LAKHINA]

AR-cum-PS

[S.S.R. KRISHNA]

Assistant Registrar

[SIGNED ORDER IS PLACED ON THE FILE]