IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16743 OF 2025

1. Infiiloom India Pvt. Ltd. Thr. Its Senior Manager HR. Nandkumar Jadhav **...Petitioner**

V/s.

1. Employees Provident Fund Organization Ministry of Labour through The Central Board of Trustees.

2. Regional Provident Fund Commissioner-I **...Respondents**

Mr. Rohaan Cama *with Ms. Sapana Rachure and Ms. Priya Chaubey for the Petitioner.*

Mr. Gunajan Chaubey *for Respondents*

CORAM: SANDEEP V. MARNE, J.

RESERVED ON. 02 NOVEMBER 2026.

PRONOUNCED ON. 25 NOVEMBER 2026.

JUDGMENT:

1) By this Petition, Petitioner has challenged order dated 29 September 2025 passed by the Regional Provident Fund Commissioner-I, Pune-I under the provisions of Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**) holding it in default of remittance of amount of Rs. 3,48,19,204/- for the inquiry

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period from March 2019 to April 2024 as well as levying interest under Section 7Q of the EPF Act.

2) Ordinarily, there is a statutory remedy of filing Appeal under Section 7I of the EPF Act against an order passed under Section 7A. However, it is the case of the Petitioner that the impugned order is passed in violation of principles of natural justice and also in violation of the guidelines published vide circulars dated 6 August 2014 and 14 February 2020 and that therefore the Petitioner need not be relegated to the remedy of Appeal. Accordingly, the Petitioner has challenged Section 7A order dated 29 September 2025 directly before this Court by filing the present Petition.

3) Petitioner is a company manufacturing knitted socks. It has multiple manufacturing units and has around 1924 employees in its four manufacturing units at Pune, Nashik, Nellore (Andhra Pradesh) and Dadra (Dadra and Nagar Haveli). In its manufacturing unit at Sanaswadi Pune, Petitioner was operating 360 knitting machines and had employed 505 employees as of 31 March 2024 and at that time, two employees' unions were active. Infiiloom India Kamgar Sanghatana was a recognized union whereas Maharashtra Rajya Kamgar Utkarsha Sanghatna was not a recognized union. The unrecognized union filed a complaint dated 8 October 2024 to the Regional Provident Fund Commissioner-I, Pune **(RPFC)** complaining that the Petitioner was making incorrect deductions on Provident Fund **(PF)** dues of its employees by excluding some of the allowances. Based on the complaint dated 8 October 2024, Respondent No. 2-RPFC issued a show cause

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notice dated 22 October 2024. Copy of the notice was also served on the Enforcement Officer for preparing and submitting a report within seven days. On 26 October 2024, the Petitioner addressed a letter to the RPFC, raising certain preliminary objections and forwarding a report demonstrating compliance with the provisions of the EPF Act. The Enforcement Officer submitted his report on 25 October 2024 concluding that the Petitioner had committed a default in remittance of PF contributions.

4) On 19 November 2024, RPFC issued summons to the Petitioner initiating inquiry under Section 7A of the EPF Act. Petitioner responded to the summons on 26 November 2024. It also submitted several documents on 25 November 2024. Thereafter, the inquiry commenced and the Petitioner filed an application for deciding the preliminary issue of maintainability of the inquiry. In the mean time Enforcement Officer submitted report dated 18 March 2025. By order dated 4 June 2025, RPFC dismissed the preliminary objection of maintainability of complaint filed by the unrecognized union. Petitioner's application for cross-examining the Enforcement Officer was allowed and the Enforcement Officer was cross-examined. The Petitioner again applied for further cross-examination of the Enforcement Officer, which request was declined. After hearing the parties, RPFC passed order dated 29 September 2025 directing the Petitioner to remit an amount of Rs. 3,48,19,204/- towards PF contribution and interest under Section 7Q of the EPF Act. On 5 December 2025, notice under Section 8F of the EPF Act was issued for effecting recoveries. Aggrieved by the order dated 29 September 2025, the Petitioner has filed the present Petition.

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5) By order dated 11 December 2025, this Court granted ad-interim stay to the impugned order as well as to the order passed under Section 8F of the EPF Act on 5 December 2025. Respondents have appeared in the Petition and have filed their affidavit-in-reply.

6) Mr. Cama, the learned counsel appearing for the Petitioner submits that the impugned order passed by the RPFC is in gross violation of principles of natural justice and that the same also violates the guidelines dated 6 August 2014 and 14 February 2020. He relies on judgment of this Court in ***G4s Secure (Solutions) India Private Limited V/s Employees Provident Fund Organization and Anr***.[1]. According to him, the guidelines are mandatory in nature and violation thereof renders the impugned order illegal. That the stand of the Respondents that circulars do not bind the authorities is contrary to the stand taken by it before this Court in ***G4s Secure*** (supra). He relies on judgments of the Apex Court in ***Home Secretary U.T of Chandigarh and Anr. V/s Darshjit Singh Grewal and Ors.***[2] and ***Ranadey Micronutrients V/s Collector of Central Excise***[3] in support of his contention that circulars bind the authority.

7) Mr. Cama further submits that mere participation in the inquiry does not mean that the eventual outcome cannot be challenged on the ground of maintainability. That the issue of maintainability was raised in Application dated 25 February 2025, which is not decided in

1 Writ Petition No. 13525 of 2023 decided on 19 November 2025

2 (1993) 4 SCC 25

3 (1996) 10 SCC 387

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order dated 4 June 2025. That reliance is wrongly placed on report dated 18 March 2025 though the same was prepared months after initiation of the inquiry. That the investigation report dated 25 October 2024 was not furnished to the Petitioner, although the same was required to be supplied along with the summons dated 19 November 2024 in the prescribed Annexure A format, as held by this Hon'ble Court in ***G4s Secure*.** That the RPFC has blindly relied on compliant of unrecognized union and in absence of any *prima facie* material proceeded to initiate Section 7A proceedings. That since initiation of inquiry is in violation of binding guidelines, the entire proceedings and the resultant order are illegal.

8) Mr. Cama further submits that *de hors* the merits, equitable considerations cannot override the mandate of law. Where the law prescribes certain preconditions for the initiation of an inquiry, failure to comply with such preconditions renders the entire initiation of the inquiry bad in law. Once it is demonstrated that the prescribed preconditions have not been complied with, equitable considerations have no application in the present case. He prays for setting aside the impugned order.

9) Mr. Chaubey, the learned counsel appearing for Respondents opposes the Petition submitting that the impugned order dated 29 September 2025 is passed after following the principles of natural justice and by granting due opportunity of hearing to the Petitioner. That therefore, no case is made out for avoiding the statutory remedy of

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Appeal and for directly approaching this Court in writ jurisdiction. He submits that even the guidelines relied upon by the Petitioner have been duly followed in the present case, as the inquiry was conducted upon receipt of the complaint and after the concerned authority was satisfied that the *prima facie* material existed to warrant such inquiry and accordingly, summons initiating the proceedings were issued. That guidelines otherwise do not have any binding force and he relies on judgment of the Apex Court in ***Bengal Iron Corporation and Ors. V/s Commercial Tax Officer and Ors***.[4]. He submits that the Petitioner has grossly underreported the wages by bifurcating them under different heads of allowances for the purpose of evading the statutory dues. That therefore the Petition may not be entertained. He prays for dismissal of the Petition.

10) Rival contentions urged on behalf of the parties now fall for my consideration.

11) Petitioner has filed the present Petition directly before this Court instead of filing an Appeal under the provisions of Section 7I of the EPF Act challenging order dated 29 September 2025, which is passed under Section 7A of the EPF Act. Petitioner alleges violation of guidelines as well as of principles of natural justice on the part of RPFC and questions the manner of initiation of Section 7A proceedings. According to the Petitioner, since initiation itself is grossly erroneous and strikes at the very root of the matter, Petitioner may not be relegated to the remedy of statutory Appeal.

4 MANU/SC/0365/1993

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12) In the present case, the RPFC acted on the basis of source information in the form of a complaint dated 8 October 2024, filed by the Employees' Union, alleging that the Petitioner was paying various allowances under different heads with a view to avoid payment of Provident Fund contributions thereon. According to Petitioner, the complaint dated 8 October 2024 was filed by the unrecognized union which had no *locus standi* to raise any grievance on behalf of the employees in the light of existence of another recognized union. Accordingly, the Petitioner filed an application dated 25 February 2025, raising objections to the maintainability of the proceedings. One of the objections was about *locus* of the union to file the complaint. The objection has been rejected by the RPFC by order dated 4 June 2025 holding that the resignations by 155 employees of unrecognized union were tendered on 25 October 2024 whereas the complaint was filed by the union on 8 October 2024. I do not find any error on the part of RPFC in rejecting the objection of *locus*. Even Mr. Cama has fairly not questioned correctness of decision of RPFC in rejecting the argument of *locus*.

13) However, Mr. Cama has strenuously pressed into service the aspect of violation of guidelines dated 6 August 2014 and 14 February 2020 in support of his contention that the very initiation of inquiry under Section 7A is liable to be set aside on account of non-compliance with the procedure prescribed in those guidelines. It must however be noted at once that in the maintainability application, Petitioner referred to the guidelines issued vide circular dated 14 February 2020 and it did

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not rely on guidelines dated 6 August 2014. The RPFC therefore had no occasion to consider the objection of violation of guidelines dated 6 August 2014. However, during the course of his oral submissions, Mr. Cama has also sought to highlight guidelines dated 6 August 2014 mainly while relying on judgment of this Court in ***G4s Secure*** (supra).

14) So far as guidelines vide circular dated 14 February 2020 are concerned, the RPFC has taken note of the same and has reproduced the entire circular dated 14 February 2020. Paragraphs 1 to 6 of RPFC's order read thus:-

> 1. Inquiries u/s 7A shall not be initiated for any purpose extraneous to the statutory mandate of section 7A i.e dispute of applicability or determination of dues. Therefore grounds such as non-submission of returns, non-production of records, non-cooperation in inspections etc, are not reasons within the sweep of section 7A and do not, therefore, constitute a sufficient basis for initiating proceedings under section 7A.
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> 2. The minimum standard of evidence for commencement of any legal proceedings is "existence of a prima-facie case" and the same applies to proceedings u/s 7A as well. Any inquiry or legal proceeding initiated without a prima- facie case is of the nature of fishing and roving inquiry and the same is impermissible in law. Such inquiries are a nullity in the eyes of law and are non-est ab-initio. Therefore the Assessing Officers shallrecord reasons in file, on the basis of evidence available on record, regarding existence of a prima-facie case of default, or of an applicability dispute, before initiating process u/s7A.
>
> 3. A mere complaint in itself does not constitute prima-facie evidence, sufficient to initiate an inquiry u/s 7A as complaint is only a source of information and not a legal proof of the allegations. Therefore, any complaint is required to be investigated by an Enforcement Officer under section 13 (1) of the Act and 9ubstantiated on the basis of admissible evidence gathered during investigation. The tendency to initiate inquiries on the basis of complaints alone is legally untenable and must be avoided as it lead to surpassing the investigations required under law before initiation of any inquiry.

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> 4. Sometimes the inquiries are initiated for prolonged durations such as 5 to 20 years without any evidence of such prolonged default. This practice is legally untenable and must be eschewed. Therefore, before initiating the inquiry, the assessing officer shall record in writing proximate nexus with the evidence of default available on record and the period for which the inquiry is intended to be held.
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> 5. Once an inquiry is initiated for specific reasons and period, the scope thereof cannot be extended beyond the fact-in-issue. The scope of the inquiry need not travel beyond the issues identified at the stage of its initiation. For any new reason or period separate notice must be issued. The records summoned from the employer, therefore, must have reasonable linkage with the subject matter of determination and the period. The practice of summoning unrelated records for prolonged period amounts to conducting a fishing and roving inquiry which is not permissible in law.
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> 6. Wherever the inquiries are intended to be initiated on the basis of credible evidence and meeting the requirements of principles narrated above, reasons for initiation of inquiry must be recorded in writing and a copy of all documents forming basis for initiation of inquiry must be supplied to the concerned parties along with the notice u/s 7A.

15) Relying on the guidelines issued vide circular dated 14 February 2020, Mr. Cama has contended that the RPFC has acted on a mere complaint by treating the same as *prima facie* evidence without investigating the same through Enforcement Officer. The contention however is totally erroneous and contrary to the facts. After receipt of complaint dated 8 October 2024, the RPFC directed investigation. The preliminary show cause notice addressed to the Petitioner on 22 October 2024 was apparently also marked to the Enforcement Officer as has been specifically pleaded by the Petitioner in paragraph 10 of the Petition, which reads thus:-

> 10. On 22nd October 2024 (basis the complaint dated 8th October 2024) Respondent No. 2 issued a Show Cause Notice to the Petitioner and sought an explanation. A copy of the Show Cause Notice was also served on the Enforcement Officer to submit a report within seven (7)

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> days i.e. by 29th October 2024. A copy of the Show Cause Notice dated 22nd October 2024 is annexed hereto as Exhibit-"D".

16) Thus, the RPFC did direct investigation of the complaint. The Enforcement Officer investigated the complaint and prepared report dated 25 October 2024 recording that the Petitioner had in fact paid number of allowances as a part of the salary structure to several of its employees and that allowances are required to be treated as basic wages for PF contributions. The RPFC took cognizance of the report dated 25 October 2024 and, accordingly, initiated an inquiry under Section 7A of the EPF Act by issuing summons dated 19 November 2024. Apart from the impugned order recording so, the affidavit-in-reply filed by Respondents also confirms the same. Paragraphs 25 and 26 of the Reply read thus:

> 25. A Show Cause Notice dated 22.10.2024 has been issued to he petitioner establishment with copy of Enforcement Officer to verify the complaint and submission of report. The said show Cause Notice was sent through email to the establishment on 22.10.2024. The Jurisdictional Enforcement Officer, through his report dated 25.10.2024, submitted that the respondent had in fact paid a number of allowances, as a part of its salary structure, universally to its employees and such allowances ought to have been considered as basic wages. The Enforcement Officer recommended initiation of proceedings under Section 7A of quantification of the relevant dues.
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> 26. Cognizance of Inspector's report was taken and present proceeding u/s 7A of the EPF & MP Act, 1952 were initiated covering the 04/2024 vide summon no. MH /PF/PU/PUN/32482/Comp/50105/7A/481 dated 19.11.2024.

17) In the present case, thus there is due compliance with the guidelines issued vide circular dated 14 February 2020 as the complaint was duly investigated and after recording satisfaction about existence of

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prima facie material, the inquiry under Section 7A was commenced. The Petitioner has not disputed conduct of preliminary inquiry by the Enforcement Officer as he has averred in paragraph 13 of the Petition as under:

> 13. Shockingly, even prior to the Petitioner's response, the Enforcement Officer submitted his report on 25th October 2024 erroneously concluding that the Petitioner is in default. Pertinently, the report was based only on four salary slips submitted along with the complaint. This report was not served upon the Petitioners.

18) Coming to the guidelines dated 6 August 2014, the same are more or less similar to the ones contained in subsequent circular dated 14 February 2020. The guidelines dated 6 August 2014 contemplate initiation of an inquiry upon receipt of actionable and verifiable information, and require issuance of a notice to the establishment indicating the information forming the basis of such notice. The guidelines dated 6 August 2014 further provide that the investigation report submitted by the Officer must be examined and that an inquiry under Section 7A shall be initiated only if the investigation report indicates existence of a *prima facie* case. The guidelines of 2014 also mandate accompaniment of documents alongwith the notice under Section 7A, on the basis of which inquiry is proposed to be conducted in the prescribed format. Mr. Cama has invited my attention to the prescribed format set out in Annexure A for issuance of a notice under Section 7A of the EPF Act. He submits that Schedule A to the said notice mandates the enclosure of relevant documents, including the inspection report. In support of his contention, he points out that the report of the Enforcement Officer was not annexed to the summons issued under Section 7A of the EPF Act.

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19) In my view, however mere failure to append the preliminary report of the Enforcement Officer has not caused any prejudice to the Petitioner in the facts and circumstances of the present case. There is no dispute to the position that after initiation of the inquiry, final report of Enforcement Officer was prepared on 18 March 2025 and Petitioner was served with the same. Petitioner has conducted cross-examination of the Enforcement Officer. In that view of the matter, mere failure to attach preliminary report of Enforcement Officer to the summons issued to the Petitioner for initiation of Section 7A proceedings does not vitiate the inquiry.

20) Mr. Cama has strenuously relied upon judgment of this Court in ***G4s Secure*** (supra) in which this Court has held in paragraphs 18 to 23 is under:

> 18. The show cause notice dated 6th August, 2021 was in turn based on three complaints received against the Petitioner. The reply Affidavit and the impugned order records that the complaint by the Member of Parliament was forwarded to the office of the Respondent No 2 for further investigation. The circular dated 6th August, 2014 permits the verifiable complaints received from general public to constitute source for investigation and/or enquiry. The procedure set out in the circulars first requires the Enforcement Officer to investigate the complaint, then to submit the report to the Compliance Branch and the investigating report alongwith the observations of the Compliance Branch to be forwarded to the Assessing Officer for initiation of inquiry under Section 7A. The circular directs that no inquiry is to be initiated unless prima facie case exists.
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> 19. The reply Affidavit states that the jurisdictional inspector was directed to investigate the complaint who submitted report dated 28th June, 2021 informing that no records were submitted for inspection. The investigation by Enforcement Officer contemplated is as per provisions of Section 13(1) of EPF Act, which vests the inspector with investigating power of checking the correctness of the information provided under the Act, verifying compliance by the employers and for

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the said purpose to enter and search an establishment, examine and make copies of relevant book, register etc. The complaint, even if received by the department, has to substantiated by investigation and on the basis of admissible evidence gathered during the investigation.

20. The investigation done in the present case by Enforcement Officer was only to address a communication to the Petitioner to produce records and such report can by no stretch of imagination can be said to substantiate the complaint received against the establishment. The reply Affidavit is completely silent as to whether the report was Forwarded to the Compliance Branch and thereafter forwarded to the Assessing Officer alongwith the observations of the Compliance Branch. From the material on record, it appears that the complaint was received From the Member of Parliament which was acted upon with promptitude by directing the investigation. No investigation was carried out under Section 13 of the EPF Act and as no records were produced, show cause notice dated 6th August, 2021 was issued for production of records and due to non production of records, notice under Section 7A was issued. There is a complete departure from the directives laid down in the circular of 6th August, 2014 which sets out a three tier mechanism before initiation of inquiry under Section 7A. The initiation of inquiry is to be preceded by an investigation report by Enforcement Officer, recommendations of the Compliance Branch on the investigation report and existence of prima facie case. From the pleadings, it is evident that there is no investigation by Enforcement Officer, no recommendation of Compliance Branch and no finding of existence of prima facie case. The initiation of inquiry was based on mere complaint without the same being substantiated, which was precisely cautioned against by the circulars of the department.

21. Further non compliance of the guidelines/circulars is demonstrated from the fact that the notice issued under Section 7A on 30th October, 2022 is not in the prescribed format of Annexure A, as it fails to annex the copies of the report of Enforcement Officer. The notice was required to be accompanied with documents constituting basis for initiation of inquiries which was also directed by the Hon'ble Division Bench by its order dated 24th April, 2023. What was furnished to the Petitioner were copies of the complaint and not the report of the Enforcement Officer which was mandated to be furnished by circular of 8th February, 2016.

22. As per the applicable department circulars, the sine qua non for initiation of inquiry is existence of prima facie case to be ascertained on the basis of the investigation report and recommendation/observation of the Compliance Branch. Neither the reply affidavit nor the submission of learned counsel for the Respondents speaks of such report being placed before the Assessing officer.

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> 23. In the impugned order, the Respondent No. 2 has accepted the binding force of the guidelines issued by the department. The Respondent No. 2 formulated the correct proposition which arose for consideration as to whether initiation of present proceedings under section 7A is inconsistent with the department's guidelines however failed to notice the non-compliance of the pre-requisites for initiation of inquiry as set out in the guidelines.

21) The facts of the present case are entirely distinguishable from those in ***G4s Secure***, and, therefore, the ratio laid down therein has no application to the present case. In ***G4s Secure***, the Petitioner therein had challenged the order passed by RPFC dismissing maintainability challenge to the inquiry proceedings. Section 7A inquiry was pending and yet to reach its logical conclusion. This Court entertained the Petition against order dismissing maintainability challenge. There is no statutory Appeal against an order dismissing the maintainability challenge. Thus in ***G4s Secure*** there was no issue regarding maintainability of the Petition in the light of availability of alternate remedy. On the other hand, the present case involves finalization of Section 7A proceedings after Petitioners maintainability application was rejected by order dated 4 June 2025. Petitioner participated in Section 7A inquiry, conducted cross-examination of Enforcement Officer, relied on documents and presented its arguments. Section 7A proceedings have culminated into order final order dated 29 September 2025 against which statutory Appeal under Section 7I of the EPF Act is provided. By skirting the said remedy, Petitioner has directly filed the present Petition before this Court challenging the order dated 29 September 2025. Apart from the fact that ***G4s Secure*** judgment involved challenge to merely an order dismissing maintainability objection, no investigations were apparently

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conducted by the RPFC before initiation of proceedings under Section 7A of the EPF Act. On the other hand, in the present case, complaint filed by the Union on 8 October 2024 has been investigated through Enforcement Officer, who submitted preliminary report dated 25 October 2024. The RPFC therefore had preliminary material before it to record satisfaction about existence of *prima facie* case. In my view, therefore, ratio of the judgment of ***G4s Secure*** would have no application to the facts of the present case.

22) Both the sides have relied on judgments of the Apex Court in support of their rival contentions about the binding nature of the circulars.

23) Mr. Cama has submitted that in ***G4s Secure***, Respondents therein had specifically admitted binding nature of the guidelines. However, in the present Petition Respondents have stated on affidavit that departmental circulars do not override the statutory provisions of the Act and that in the event of any inconsistency between a circular and statutory provisions, the latter would prevail. It is contended in paragraph 28(c) of the affidavit-in-reply as under:

> c. The contention regarding the nature of departmental circulars is acknowledged as a general principle; however, it is well established that circulars cannot override or supplant the statutory provisions of the Act. The Hon'ble Supreme Court has consistently held that if there is any inconsistency between a circular and the statutory provisions, the latter must prevail. While circulars aim to promote uniformity and clarity, they are intended to operate within the bounds of the law and cannot confer legality upon actions that contravene statutory requirements. In the present case, the Respondent has acted strictly in

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> accordance with the provisions of the Act and not merely on the basis of any circular.

24) Mr. Cama has relied on judgment of the Apex Court in ***Home Secretary U.T. of Chandigarh*** (supra) in which it is held in paragraph 14 of the judgment as under:

> 14. It may be relevant to emphasise at this juncture that while the rules and regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it.

Thus, in ***Home Secretary U.T. of Chandigarh***, the Apex Court has emphasized that as against statutory force of Rules and Regulations, the policy guidelines bind only the executive. It is held that once policy guidelines are formulated and communicated to the concerned authorities, the Administration is bound to adhere to and act in accordance with the same. The judgment however is not an authority on the proposition that the policy guidelines are enforceable in a Court of law.

25) In ***Ranadey Micronutrients*** (supra), the Apex Court has held in paragraph 15 of the judgment as under:

> 15. There can be no doubt whatsoever, in the circumstances, that the earlier and later circulars were issued by the Board under the provisions of Section 37-B, and the fact that they do not so recite does not mean that they do not bind Central Excise Officers or become advisory in character. There can be no doubt whatsoever that after 21-11-1994, excise duty could be levied upon micronutrients only under the provisions of heading 31.05 as "other fertilisers". If the later circular is contrary to the terms of the statute, it must be withdrawn. While the

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> later circular remains in operation the Revenue is bound by it and cannot be allowed to plead that it is not valid.

26) On the other hand, Mr. Chaubey has relied on judgment of the Apex Court in ***Bengal Iron Corporation and Ors.*** (supra) in which it is held in paragraph 18 of the judgment as under:

> 18. **So far as clarifications/circulars Issued by the Central Government and/or State Government are concerned, they represent merely their understanding of the statutory provisions. <u>They are not binding upon the Courts.</u>** It is true that those clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law. There can be no estoppel against the statute, The understanding of the government, whether in favour or against the assessee, is nothing more than its understanding and opinion. **It is doubtful whether such clarifications and circulars bind the quasi-judicial functioning of the authorities under the Act. while acting in quasi-judicial capacity, they are bound by law and <u>not by any administrative instructions, opinions, clarifications or circulars</u>**. Law is what is declared by this Court and the High Court to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean. (See Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. and Anr. MANU/SC/0040/1982: [1983]1SCR1000.
>
> *(emphasis and underlining added)*

27) Guidelines, circulars, and administrative instructions usually guide day-to-day administration and bind the issuing department or subordinate officials, provided they do not conflict with statutes or constitutional provisions. They may bind the executive but cannot be enforced in a Court of law. Non-statutory guidelines are not rigid statutes and the executive can also deviate from them if specific facts or legal situations justify doing so, unless doing so becomes

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arbitrary. Purely administrative or non-statutory policy guidelines do not, on their own, create legally enforceable rights that a litigant can compel the Court to enforce. Courts are not bound by executive guidelines. In rare and exceptional circumstances, the Courts may enforce non-statutory guidelines and circulars where they either carry statutory weight or protect constitutional rights, or prevent arbitrary government action. In my view however, it is not necessary to delve deeper into the aspect of binding nature of the guidelines in view of the fact that there is substantial compliance with the guidelines in the facts and circumstances of the present case. In ***G4s Secure,*** the guidelines were flagrantly breached, and the proceedings were initiated without conducting any preliminary investigation as advised thereunder. In the present case however, preliminary investigations were conducted through the Enforcement Officer and initiation of Section 7A inquiry is premised on the findings recorded in the preliminary investigation report.

28) Even otherwise facts of the present case do not deserve any special treatment to the Petitioner in exercise of extraordinary jurisdiction by this Court under Article 227 of the Constitution of India. Perusal of the impugned order would indicate that the Petitioner has deliberately divided the emoluments payable to the employees into allowances under several heads and only 30 to 40% of the total amounts was shown as basic wages and rest of the amounts were paid as grade allowance, miscellaneous amounts, transport allowance, etc. To illustrate, in the case of the employee- Shri. Jalinder S. Thorat, whose total emoluments were Rs.23,037/-, his basic wages were shown as only

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Rs.6,800/- and he was paid a whopping grade allowance of Rs.16,237/-. Similarly in the case of employee Shri. Girish Deviray Pai, his basic salary was only Rs.13,500/- whereas grade allowance was Rs.30,303/-. I am, therefore, satisfied that the Petitioner deliberately structured the total emoluments of its employees in such a manner that basic wages constituted only 30% to 40% of the total emoluments. This was done with the intention of avoiding payment of statutory dues, including Provident Fund contributions.

29) EPF Act is a beneficial piece of legislation enacted for the benefit of employees. Therefore, where two views are reasonably possible, this Court would be justified in adopting the view that advances and furthers the object and purpose of the legislation, as held in ***Regional Provident Fund Commissioner vs Shibu Metal Works***[5] and ***Regionl P.F.Commissioner vs Hooghly Mills Co.Ltd.& Ors***[6].

30) Considering the peculiar facts and circumstances of the present case, this Court is not inclined to entertain the present Petition challenging Section 7A order in the light of availability of remedy of Appeal under Section 7I of the Act and particularly considering the conduct of the Petitioner. The case does not involve violation of principles of natural justice to such an extent that this Court would ignore availability of statutory remedy of appeal and entertain a direct Petition before this Court.

5 AIR 1965 SC 1076
6 Civil Appeal No.655 OF 2012 decided on 18/01/2012

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31) In my view therefore, Petitioner needs to be relegated to remedy of Appeal under Section 7I of the EPF Act. This Court is conscious of the position that Presiding Officers are not available in both the Central Government Industrial Tribunal at Mumbai. In that view of the matter, if Petitioner deposits with RPFC 25% of the ascertained amount, the ad-interim relief granted by this Court can be continued throughout pendency of Appeal to be presented before the Central Government Industrial Tribunal.

32) Writ Petition is accordingly **dismissed**. There shall be no order as to costs.

33) Petitioner would however be at liberty to file Appeal under Section 7I of the EPF Act before Central Government Industrial Tribunal challenging the order dated 29 September 2025 within two weeks. If the appeal is filed within two weeks, the objection as to limitation shall not be raised in view of provisions of Section 14 of the Limitation Act, 1963. The Appeal if filed, shall be decided on its own merits, uninfluenced by any observations made in the judgment. If Petitioner files the appeal and deposits before the RPFC 25% of the ascertained amount, the ad-interim relief granted by this Court by order dated 11 December 2025 shall continue to operate during pendency of the Appeal. If Appeal is not filed and/or deposit is not made within two weeks, the ad interim protection shall stand vacated.

[SANDEEP V. MARNE, J.]

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