



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 10462 OF 2023

Shamshuddin Ali Mullaji  
Age:68 Years, Occ.: Retired  
R/a. Masjid Trust Building,  
3<sup>rd</sup> Floor, Room No:11,  
Kakoli Mohalla, Kalwa,  
Thane – 400605.

... Petitioner

**Versus**

1. The Assistant Commissioner of Employees Provident  
Fund Commissioner (Pension), Regional Office,  
Thane (North), Vardan Commercial Complex,  
6<sup>th</sup> Floor, MIDC Road No.16, Wagle Estate,  
Thane-400 604.

2. Bank of India  
Through The Branch Manager,  
Branch: Sanghvi Valley A1 and A2,  
Parsik Nagar, Thane 400605  
Tel Ph. No.:-022/25399476, 022/25414483.

3. State Bank of India  
Through The Branch Manager,  
Shop No.:-4 and 5, Milestone Corporate Park,  
Old Mumbai-Pune Road, Kalwa,  
Thane (E)-400605.

... Respondents

-----  
Mr. J. P. Kharge, for the Petitioner.

Mr. Rohit Sakhadeo, appointed as Amicus Curiae.

Ms. Gunjan Chaubey a/w. Mr. Vinay Kate, for the Respondent -EPFO.

-----

**CORAM : RAVINDRA V. GHUGE  
AND  
ABHAY MANTRI, JJ.**

**DATE : MARCH 5, 2026**

**ORAL JUDGMENT (Per Ravindra V. Ghuge, J.) :**

1. Heard. **Rule.** Rule made returnable forthwith and heard finally by the consent of the respective parties.

2. This Petition brings out a classic case of misrepresentation, non-disclosure of material information and a systematic act of defrauding the State Exchequer. As we narrate the various dates and sequence of events in the light of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1995, the story of misrepresentation, non-disclosure and defrauding the State Exchequer, would unfold itself.

3. The dates and sequence of events are as under:
- (a) The Petitioner was initially working in Poyasha Pvt. Ltd., Kalwa, Thane, from 1978 to 1994. His service was discontinued due to the closing down of the company.
  - (b) The Petitioner then joined a private company namely A. S. Moloobhoy and Sons, Mazgaon, Mumbai, on 1<sup>st</sup> February 1997.
  - (c) The Petitioner retired from the second service after attaining the age of superannuation, on 3<sup>rd</sup> June 2009.
  - (d) After joining the second employment, he moved an Application for early pension with the Provident Fund Authorities (for short, 'P.F. Authorities'). Based on the said Application, the payment of pension with relation to the first employment commenced, when the Petitioner was already in employment with the new employer.

- (e) After he superannuated from the second employment, he filled up one more pension form which is the standard Form 10-D (EPS).
- (f) Clause 16 in the form pertains to a question as to whether pension is being drawn under the Employees' Pension Scheme (EPS), 1995 (for short, 'EPS, 1995'), which mandates disclosure of any earlier pension or person receiving pension from an earlier employment. The Petitioner left clause 16 blank.
- (g) As a consequence, the Petitioner started earning dual pension. The first pertaining to the first employment commenced when he was already in employment with the second employer.
- (h) There is no dispute that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1995 (EPS) are applicable to the Petitioner.

4. Since the learned Advocate for the Petitioner was intermittently appearing in the matter and as we noticed that he was not present on 29<sup>th</sup> January 2026, when this matter was listed in the Special Pension Category Cases Board in the drive initiated by this Bench for listing pension matters on every 2<sup>nd</sup> and 4<sup>th</sup> Thursday, we were constrained to appoint an Amicus Curiae. We requested Shri Rohit Sakhadeo, learned Advocate who readily agreed.

5. The learned Amicus has tendered a 7 pages note dated 4<sup>th</sup> March 2026, by way of assistance to the Court. Copies of the said note have been supplied to the learned Advocates for the Petitioner as well as the Respondent Provident Fund Commissioner. We have considered the said note threadbare and we agree with the view expressed by the learned Amicus. If the Petitioner desired early pension, he should have applied for such pension, after he put in qualifying service and retired from his first employment which concluded on account of the closure of the company. The Petitioner did not seek early pension. He also did not ask for a 'Scheme Certificate', which is made available to an employee who has put

in qualifying service in his first employment and has retired before attaining the age of superannuation at 58 or 60 years, as the case may be. This is provided under the EPS, 1995.

6. What the Petitioner has done and which indicates the intention to defraud the system, is that, after he joined the second employment, he filled in the Form 10-D and sought pension while in service with the second employer drawing full salary on month to month basis. He did not disclose to the department that he was already in employment. Had he sought the 'Scheme Certificate', his earlier employment would have been added to the subsequent employment and he would have drawn pension after attaining the age of superannuation at 58 years from the second employment.

7. For ready reference, we are reproducing clauses 12 and 14 of the EPS, 1995 hereunder:

*“[12. Monthly Member’s pension:- (1) A Member shall be entitled to:—*

(a) “Superannuation Pension” if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years;

(b) “Early pension”, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years;

(2) In the case of a new entrant the amount of monthly Superannuation Pension or Early Pension, as the case may be, shall be computed in accordance with the following factors, namely:—

*Monthly Member’s Pension = Pensionable salary x Pensionable Service*

*[Provided that the members’ monthly pension shall be determined on a prorata basis for the pensionable service upto the 1<sup>st</sup> day of September, 2014 at the maximum pensionable salary of six thousand and five hundred rupees per month and for the period thereafter at the maximum pensionable salary of fifteen thousand rupees per month.]*

(3) In the case of an existing member in respect of whom the date of commencement of pension is after the 16<sup>th</sup> November, 2005,-

*(i) Superannuation or early pension shall be equal to the aggregate of: -*

*(a) pension as determined under sub-paragraph (2) for the period of pensionable service rendered from the 16<sup>th</sup> November, 1995, or Rs. 635/- per month whichever is more;*

*(b) past service pension shall be as given below:-*

*The past service pension payable on completion of 58 years of age on the 16-11-1995.*

<i>SI No.</i>	<i>Years of past service</i>	<i>Salary upto Rs.2,500/- per month</i>	<i>Salary more than Rs.2,500/- per month</i>
	<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(i)</i>	<i>Up to 11 years</i>	<i>80</i>	<i>85</i>
<i>(ii)</i>	<i>More than 11 years but up to 15 years</i>	<i>95</i>	<i>105</i>
<i>(iii)</i>	<i>More than 15 years but less than 20 years</i>	<i>120</i>	<i>135</i>
<i>(iv)</i>	<i>Beyond 20 years</i>	<i>150</i>	<i>170</i>

*The amount under column (2) or (3) above, as the case may be, shall be multiplied by the factor given in Table “B” corresponding to the period between the 16<sup>th</sup> November, 1995, and the date of exit to arrive at past service pension payable.*

*(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs. 800/- per month, provided the eligible service is 24 years. Provided further, if it is less than 24 years, the pension as computed above shall be reduced proportionately subject to a minimum of Rs. 450/- per month.*

*(4) In the case of an existing member and in respect of whom the date of commencement of pension is between the 16<sup>th</sup> November, 2000 and the 16<sup>th</sup> November, 2005, -*

*(i) Superannuation or early pension shall be equal to the aggregate of —*

*(a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16<sup>th</sup> November, 1995 or Rs. 438/- per month whichever is more;*

*(b) past service pension as provided in sub-paragraph (3).*

*(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs. 600/- per month, provided the eligible service is 24 years. Provided further, if it is less than 24 years, the pension shall be proportionately less subject to the minimum of Rs. 325/- per month.*

*(5) In the case of an existing member and in respect of whom the date of commencement of pension is before the 16<sup>th</sup> November, 2000 -*

*(i) Superannuation or early pension shall be equal to the aggregate of—*

*(a) pension as determined under sub-paragraph (2) for the period of service rendered from the 16<sup>th</sup> November, 1995 or Rs. 335/- per month whichever is more ;*

*(b) past service pension as provided in sub-paragraph (3),*

*(ii) The aggregate of (a) and (b) calculated as above shall be subject to the minimum of Rs. 500/- per month, provided the eligible service is 24 years:*

*Provided further, if it is less than 24 years the, pension shall be proportionately lesser but subject to the minimum of Rs. 265/- per month*

*(6) Except as otherwise expressly provided hereinafter the monthly member's pension under subparagraphs (2) to (5) mentioned hereinabove, as the case may be, shall be payable from a date immediately following the date of completion of 58 years of age notwithstanding that the member has retired or ceased to be in the employment before that date.*

*(7) A member if he so desires, may be allowed to draw an early pension from a date earlier than 58 years of age but not earlier than 50 years of age. In such cases, the amount of pension shall be reduced at the rate of four per cent, for every year the age falls short of 58 years.*

*(7-A) The monthly member's pension including any relief payable to any existing or future member under this paragraph shall not be less than one thousand rupees.*

*[Provided that, on and from the first day of September, 2014, the minimum pension of one thousand rupees payable under this subparagraph shall be subject to –*

*(i) deductions on account of benefits of commutation and return of capital taken by members under the extant provisions of this scheme prior to 26th September, 2008; and*

*(ii) deductions on account of early pension under subparagraph (7)].*

*(7-B) (a) A member who has attained the age of fifty-eight years and is otherwise eligible for pension under clause (a) of sub-paragraph (1) of this paragraph, if he so desires, may be allowed to defer the age of drawing pension later than fifty-eight years but not beyond sixty years of age.*

*(b) In such cases as is referred to in clause (a), -*

*(i) the amount of pension shall be increased at the rate of four per cent. for every completed year after the age of fifty-eight years which shall be restricted to the wage ceiling given under the proviso to sub-paragraph (2) of paragraph 3;*

*(ii) the member, at his or her option, may also be allowed to continue contributions under paragraph 3 to the Employees' Pension Fund for the period for which the drawal of pension has been deferred, if the member is continuing in employment after the age of fifty-eight years, and the pensionable service and pensionable salary for the purpose of determination of pension under sub-paragraph (2) will be reckoned taking into account the period for which contributions were made after the age of fifty-eight years but not beyond the age of sixty years ;*

*(iii) in the event of death of the member, who has opted for deferring the age of drawing pension under this sub-paragraph, after attaining the age of fifty-eight years and before the commencement of the pension so deferred, the family of the member will be entitled to pension under clause (c) of sub-paragraph (1) of paragraph 16 from the date following the date of death of the member as if the member monthly pension had commenced on the date of death of the member.]*

*(8) If a member ceases to be in the employment by way of retirement or otherwise earlier than the date of superannuation from which pension can be drawn, the member may, on his option, either be paid pension as admissible under this Scheme on attaining the age exceeding 50 years or he may be issued a scheme certificate by the Commissioner indicating the pensionable service, the*

*pensionable salary and the amount of pension due on the date of exit from the employment. If he/she is subsequently employed in an establishment coverable under this Scheme, his/her earlier service as per the scheme certificate shall be reckoned for pension along with the fresh spell of pensionable service. The member postponing the commencement of payment of pension under this paragraph shall also be entitled to additional relief sanctioned under this Scheme from time to time:*

*[Provided that if the member does not take up an employment coverable under this Scheme and has rendered less than ten years eligible service on the date of exit, but dies before attaining the age of fifty-eight years and before a continuous period of thirty-six months has elapsed during which contributions have not been received in respect of the member in the Pension Fund, the amount of contributions received in his case shall be converted into a monthly widow pension or children pension and the widow pension in such cases shall be calculated at the scale laid down in Table 'C' and the children pension at 25 per cent thereof for each child (upto two) :*

*Provided further that if there is no widow, then the orphan pension shall be payable at the rate of 75 per cent of the amount which would have been payable as a widow pension subject to the provisions of the paragraph 16 :*

*Provided also that if the member does not take up an employment coverable under this Scheme and has rendered less than ten years eligible service on the date of exit; but dies before attaining the age of fifty-eight years after a continuous period of thirty-six months has elapsed during which contributions have not been received in respect of the member in the Pension Fund, the family shall be entitled to benefits under paragraph 14\.*

***14. Benefits on leaving service before being eligible for monthly member's pension.*** - *If a member has not rendered the eligible service specified in sub-paragraph (1) of paragraph 12 on the date of exit, or on attaining the 58 years of age, whichever is earlier, such member shall be entitled to a withdrawal benefit as laid down in Table 'D' or may opt to receive the Scheme certificate provided on the date he has not attained 58 years of age:*

*Provided that for calculating such withdrawal benefit, the wages at exit shall be the weighted average of his wages at the end of every wage ceiling period:*

*Provided further that an existing member shall receive additional return of contributions for his past service under the Employees' Family Pension Scheme, 1971, computed as withdrawal-cum-retirement benefits as per Table "A" multiplied by the factor given in Table "B"]".*

[It is noteworthy that clauses 12A and clause 13 have been deleted on 26<sup>th</sup> September 2008].

8. By this Petition, the Petitioner was constrained to approach this Court since the Respondent No.1 P F department had halted the payment of his pension. The arrears have now accumulated at Rs.1,66,432/-. The recoverable amount from the Petitioner on account of

receiving dual pension is Rs.88,727/-. The department has tendered its detailed affidavit in reply dated 10<sup>th</sup> June 2024, filed through Shri Mitesh Rajmane, Regional P. F. Commissioner-II (Legal), Regional Officer, Thane (North). Specific details have been brought on record through the affidavit. It is specifically brought to our notice that the Petitioner suppressed the fact while applying for reduced pension and did not disclose his employment status with the second employer while filling in Form 10-D with relation to the first employment. The application forms, Form 10-D in both the cases have been placed on record along with the affidavit in reply.

9. Clause 12 of the EPS, 1995 clearly enumerates a scheme under which an employee can become a member of the monthly members pension scheme. As long as he is in employment, he continues to be the member of the scheme. If he concludes his employment prior to the age of superannuation, his membership concludes and he gets the right of seeking early pension provided he has not joined another employment. If he joins another employment or has a desire to do so, he can seek the 'Scheme Certificate' benefit after leaving his first employment, before joining the

second employment. He can utilize the 'Scheme Certificate' and pension will accordingly be calculated and would be paid after he superannuates from his second employment.

10. The learned Advocate for the P. F. Department places reliance upon the judgment delivered by the Division Bench of the Madras High Court, dated 10<sup>th</sup> January 2024, in an Intra-Court Appeal, in W.A. No.3564 of 2023 and C.M.P. No.29169 of 2023, in the matter of *the Assistant Provident Fund Commissioner (Pension), Employees Provident Fund Organization, Chennai vs. A. Jagadeeswaran*.

11. In *A. Jagadeeswaran* (supra), the employee was working with a company namely B and C Mills, Binny Limited, for a period of almost 24 years. He was inducted as member in the Provident Fund Organization. Upon closure of the Mill, he subsequently joined M/s. Empkee Engineers Private Limited on 1<sup>st</sup> October, 1998 and superannuated on 4<sup>th</sup> May, 2008. He was receiving short service pension which was subsequently revised when the department noticed that the employee has enjoying dual pension.

His further pension was stopped and he was asked to approach the office of the P. F. Authorities. The employee accepted his mistake, tendered an apology and requested to club both the pensions. By the order dated 27<sup>th</sup> February 2018, he was informed that he would be entitled for only one pension. The employee approached the learned Single Judge who allowed his Writ Petition.

12. In the Intra-Court Appeal, the Appellate Bench concluded in paragraph Nos.3 to 7, as under:

*“3. According to the learned counsel for the appellant, the order passed by the learned Single Judge is in contravention of the applicable statutory rules as the EPF scheme does not mandate the concept of dual pension. According to the learned counsel, the respondent failed to disclose the details of his previous employment in Form No.11, which is a statutory declaration required under paragraph 34 of EPF Scheme. That apart, Form 10-D is another declaration which is obtained from an employee wherein column 17 requires the employee to declare that he/she is not drawing pension under the Employees Pension Scheme, 1995. According to the learned counsel, the respondent has been receiving dual pension by providing two different bank account numbers. Further, the learned counsel would submit that while replying to the show cause notice dated 15.02.2018, the respondent admitted his mistake, tendered apology and requested to club*

*both the services and continue with the payment of single pension. Therefore, the learned counsel would submit that the order under challenge warrants interference and the writ appeal has to be allowed.*

*4. On the other hand, learned counsel for the respondent would submit that the payment of dual pension was not due to any misrepresentation or fraud committed on the part of the respondent. That being so, the order of recovery passed by the authority cannot be sustained. The benefit so extended may be stopped in the future, but the amount already paid cannot be sought to be recovered, that too, after a lapse of nearly 10 years. Learned counsel further submitted that the respondent, who had superannuated on 04.05.2008, is aged 74 years now and he may not be put to such an ordeal of refunding nearly Rs.67,697/-, for no fault of his.*

*5. Heard both sides and perused the materials on record.*

*6. Though it appears that the respondent/employee had erroneously made a request and claimed double pension and the order of the authority in seeking refund of the excess amount is perfectly valid, however, taking note of the fact that the respondent is a supersenior citizen, aged about 74 years, who is in the twilight of his life; that he was drawing a sum of Rs.1770/- (both pension amounts put together) as pension even in the year 2014 and there would not have been a substantial hike by now and that he being a last grade servant, we are of the view that the excess pension amount paid by the EPFO need not be recovered. It cannot be gainsaid that the recovery also has been initiated after a lapse of nearly 10 years.*

*7. Therefore, while holding that the recovery of excess pension amount paid need not be effected, this Court directs the authority concerned to club the services rendered by the*

*respondent under two different establishments and extend him the benefit of single pension from January, 2024 onwards. It is made clear that this order has been passed in the facts and circumstances of the case and shall not be treated as a precedent”.*

13. The learned Advocate for the Petitioner, at this juncture, has advanced twofold submissions. Firstly, he relies upon the judgment of the Hon’ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.*<sup>1</sup> to support his contention that recovery should not be permitted. Secondly, he submits in the backdrop of the mischief of the Petitioner exposed by the department, that the recovery amount of Rs.88,727/- may be adjusted against the arrears of his pension which is Rs.1,66,432/- and the remainder amount be paid to the Petitioner and his pension be recalculated.

14. The learned Advocate for the Provident Fund Department submits that the recovery amount of Rs.88,727/- was as in 2019 and the interest on the said amount should also be calculated till 2026 and that

---

**1** (2015) 4 SCC 334

amount should be deducted from the arrears of pension now payable. The learned Counsel for the Petitioner submits that the Petitioner has confessed before this Court and seeks mercy and prays that the interest component may not be recovered since the Petitioner is around 70 years of age and is hand to mouth.

15. We could have taken a strict view in this matter in the light of the law laid down by the Hon'ble Supreme Court in *Kishore Samrite vs. State of Uttar Pradesh & Ors.*<sup>2</sup> and *Bhaskar Laxman Jadhav & Ors. vs. Karamveer Kakasaheb Wagh Education Society & Ors.*<sup>3</sup>. It is concluded that this Court should deprive all benefits to a litigant who does not come with clean hands to the Court. A Court should be most strict with a person who tries to play a fraud on the system. However, the Petitioner has sought mercy and has shown remorse and regret. He has also volunteered to let the excess amount received by him, to be deducted from the arrears of Pension to which he would now be eligible. He has also prayed that the Provident Fund Department should recalculate the pension to which the Petitioner

---

**2** (2013) 2 SCC 398

**3** (2013) 11 SCC 531; 2012 SCC OnLine SC 1023

would now be entitled to, by adding up his earlier employment along with the subsequent employment. Therefore, we are not inclined to levy the interest component on the excess amounts paid to the Petitioner.

16. In view of the above, **this Petition is partly allowed**. As noted above, the amount of Rs.88,727/- shall be deducted from the arrears of pension of Rs.1,66,432/-. The remainder amount be paid to the Petitioner within a period of 30 days from today. Since we are not granting interest on the excess payment, we would also not grant interest on these remainder amounts to be paid to the Petitioner, to balance the equities.

17. The Provident Fund Department would recalculate the pension, if not already so done, by taking into account the above aspect and commence the payment of pension to the Petitioner, w.e.f. April, 2026. Further arrears of pension as per the said recalculated rate, for the period from June 2024 till March 2026, would be computed and the said arrears would also be paid to the Petitioner on or before 15<sup>th</sup> April 2026.

18. We find it appropriate to record that the adjustment (refund) of the excess amounts having been paid to the Petitioner, is being done in view of the consent of the Petitioner to recover them, and more importantly, in view of the mischief played by the Petitioner which resulted in defrauding the system. Since the Petitioner has sought mercy by confessing his act, we are not imposing interest on the excess amount paid, which are now being adjusted with the arrears of pension.

19. **Rule is discharged. No order as to costs.**

20. We compliment Shri Rohit Sakhadeo, learned Advocate, for the assistance rendered to the Court.

**(ABHAY MANTRI, J.)**

**(RAVINDRA V. GHUGE, J.)**

SONALI  
MILIND  
PATIL  
Digitally  
signed by  
SONALI  
MILIND  
PATIL  
Date:  
2026.03.10  
10:09:04  
+0530