

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1136 OF 2021
WITH
INTERIM APPLICATION (ST) NO. 41014 OF 2025

- (1) Shri S. L. Bhasme, aged 68 years,
lastly working as Assistant Director,
at Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India)
Aman Chambers - 4th Floor, 113,
Maharshi Karve Road, Mumbai - 400 004
and residing at B/30, Swargandhi
Co-operative Housing Society Ltd.,
Shree Nagar, Wagle Estate, Thane -400 604.
- (2) Shri C. P. Job, aged 63 years,
lastly working as Stenographer Gr. I, at
Export Inspection Agency – Bombay,
(Ministry of Commerce, Govt. of India)
Aman Chambers - 4th floor, 113 Maharshi
Karve Road, Mumbai - 400004 and
residing at C/603, Sonam Swarg CHS Ltd.,
Mira-Bhayandar Road, Bhayandar (East),
Thane-400 105.
- (3) Smt. Geeta Jagannathan, aged 65 years,
lastly working as an Office Assistant at
Export Inspection Agency - Bombay,)
(Ministry of Commerce, Govt. of India)
Aman Chambers-4th Floor, 113 Maharshi)
Karve Road, Mumbai-400 004 and
residing at 106 Mount Palace, Yogi Hills,
Mulund (West), Mumbai-400 080.
- (4) Ms. Vibha R. Shah, aged 74 years,
lastly working as Section Officer at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India)
Aman Chambers - 4th floor, 113 Maharshi
Karve Road, Mumbai-400004 and

residing at E-320 Dattani Nagar, S. V.
Road, Borivilli (West), Mumbai - 400 092)

- (5) Smt. Pallavi P. Tawade, aged 70 years,
lastly working as Section Officer at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India)
Pilot Test House, E-3, MIDC,
Andheri (East), Mumbai - 400 093 and
residing at 1/16 Ameya, D. N. Nagar,
Andheri (West), Mumbai - 400 053
- (6) Shri N. B. Kashiv, aged 79 years,
lastly working as Assistant Director (NT)
at Export Inspection Agency-Bombay,
(Ministry of Commerce, Govt. of India)
Aman Chambers - 4th Floor, 113,
Maharshi Karve Road, Mumbai-400 004
and residing at 105 Mount Palace, Yogi
Hills, Mulund (West), Mumbai-400080.
- (7) Smt. K. U. Hegde, aged 73 years,
lastly working as Section Officer at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India)
Aman Chambers-4th floor, 113 Maharshi
Karve Road, Mumbai-400 004 and
residing at 279/11, Manisha Jawahar
Nagar, Near Suvidha Hospital, Goregaon
(West), Mumbai - 400 062.
- (8) Smt. Gracy Devassy, aged 64 years,
lastly working as Stenographer Gr. I at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India)
Aman Chambers-4th floor, 113 Maharshi
Karve Road, Mumbai-400 004
and residing at Flat No. 302, Dahisar
Mandar Co-op Housing Society Ltd., Veer
Sawarkar Nagar, Sant Dnyaneshwar Marg,
Borivilli (East), Mumbai – 400066.

- (9) Shri K. K. Mani, aged 72 years,
lastly working as Assistant Director, at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India
Aman Chambers - 4th floor, 113,
Maharshi Karve Road, Mumbai-400 004
and residing at 906, Chejna Kunj,
Chincholi Bundar Road, Malad (West),
Mumbai-400 064.
- (10) Shri S. C. Arora, aged 75 years,
lastly working as Additional Director, at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India
Pilot Test House, E-3, MIDC,
Andheri (East), Mumbai-400 093 and
residing at K 202, Lok Darshan, Military
Road, Marol, Andheri (East),
Mumbai-400 059.
- (11) Shri P. V. Bhosle, aged 69 years,
lastly working as Office Assistant, at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India)
Aman Chambers - 4th floor, 113,
Maharshi Karve Road, Mumbai-400 004
and residing at & Post: Golavali, Sayadri
Nagar, Tal:Sangameshwar, Dist: Ratnagiri.
- (12) Shri M. V. Bane, aged 70 years,
lastly working as Accountant, at
Export Inspection Agency - Bombay,
(Ministry of Commerce, Govt. of India)
Pilot Test House, E-3, MIDC,
Andheri (East), Mumbai-400 093 and
residing at & Post, Nirul (Rimgichi Wadi),
Tal. & Dist: Ratnagiri.
- (13) Shri Ajit S. Thakur - since Deceased,
lastly working as Technical Officer, at

Export Inspection Agency - Bombay,
 (Ministry of Commerce, Govt. of India)
 Pilot Test House, E-3, MIDC,
 Andheri (East), Mumbai-400 093 and
 represented by his widow Smt. Sandhya
 Ajit Thakur, aged 64 years, residing at
 11, Neelam Apartment, Daji Ramchandra
 Road, Charai, Thane (West)-400 601.

- (14) Shri T. S. Thorat, aged 68 years,
 lastly working as Store-keeper Gr. II, at
 Export Inspection Agency - Bombay,
 (Ministry of Commerce, Govt. of India)
 Pilot Test House, E-3, MIDC,
 Andheri (East), Mumbai-400 093 and
 residing at D-103, Amruta Park
 Opp. Holy Cross School, Malang Road,
 Nandivali, Kalyan (East), PIN: 421 306. ... Petitioners.

Versus

- (1) Union of India through the
 Secretary, Department of Commerce
 Ministry of Commerce and Industry
 Government of India, Udyog Bhavan
 New Delhi-110 107.
- (2) The Chairman, Export Inspection
 Council, Department of Commerce,
 Ministry of Commerce and Industry,
 Govt. of India, Udyog Bhavan,
 New Delhi-110 107.
- (3) The Director (I & QC), Export
 Inspection Council, Department of
 Commerce, Ministry of Commerce and
 Industry, Govt. of India, 2nd floor, B-Plate
 Block-1, Commercial Complex, East
 Kidwai Nagar, New Delhi - 110 023
- (4) The Deputy Director In-charge

Export Inspection Agency Mumbai,
Ministry of Commerce & Industry,
Government of India, Pilot Test House,
E-3, MIDC, Andheri (E),
Mumbai – 400 093.

... Respondents

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy, Mr. Aalim N. Pinjari, Advocate for the Petitioners.

None for the Respondents

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

RESERVED ON : 27th NOVEMBER, 2025

PRONOUNCED ON : 24th DECEMBER, 2025.

FINAL ORDER : (PER ASHWIN D. BHOBE, J)

1. Heard Mr. Ramesh Ramamurthy, learned Advocate for the Petitioners.

2. By this Petition under Article 226 of the Constitution of India, the Petitioners are seeking directions to the Respondent Nos. 2 to 4 to restore the entire amount of pension to each of the Petitioners after the expiry of 15 years from the date of commutation with consequential benefits under the Export Council Pension and General Provident Fund Rules, 1981 (for short “*GPF Rules, 1981*”).

3. The material facts of the case are that Export Inspection Agency (EIA) was established under Section 7 of the Export (Quality Control and Inspection) Act, 1963. GPF Rules, 1981 were introduced with effect from 21.04.1981 to the employees working in the Export Inspection Council and Export Inspection Agency, containing deemed pension option. Petitioners had joined Export Inspection Council prior to 24.10.1981. None of the Petitioners gave any option in writing, as a result of the deeming legal fiction created by the Notification dated 21.04.1981, all the Petitioners were covered under the GPF Rules, 1981.

4. Voluntary Retirement Scheme (VRS) was offered by the Respondent Nos. 2 to 4 to its employees as a Special One Time Offer, vide Communication No. EIC/D(Q/C)/VRS/121/94 dated 21st May, 1994. Pursuant to the offer of VRS, all the Petitioners took voluntary retirement from EIA, Mumbai with full (100%) commutation of pension.

5. Petitioner Nos. 3 and 5 in the year 2002, 2003, 2011 and 2013 made representation to the Respondent Nos. 2 to 4, for grant of restoration of commuted amount of pension along with consequential benefits on the expiry of 15 years from the date of commutation of

pension. Having received no response to the representations, the Petitioners by the present Petition filed on 29.07.2020 have sought for the following substantive reliefs:-

(a) That this Hon'ble Court be pleased to hold and declare that the inaction on the part of the Respondents to restore the entire commuted amount of pension to each of the Petitioners after the expiry of 15 years from the date of commutation is violative of Section 12 of the Pensions Act, 1871 and is illegal, improper, not sustainable in law and liable to be struck down;

(b) This Hon'ble Court be pleased to issue a writ of mandamus or other appropriate writ, order or direction directing the Respondents to restore to each of the Petitioners the entire commuted amount of their pension on the expiry of 15 years from the date of commutation of the said pension and thereafter pay each of the Petitioners pension to which he/she is entitled to from that date along with arrears, if any, accruing as on date of the said pension and along with interest on the said arrears at the rate of 18% per annum from the date the pension was due till actual payment;

(c) This Hon'ble Court be pleased to issue a writ of mandamus or other appropriate writ, order or direction directing the Respondents to pay to each of the Petitioners the entire allowances and attendant benefits from the date of their retirement and thereafter pay each of the Petitioners such allowances and attendant benefits to which he/she is entitled to from that date along with arrears, if any, accruing as on date and along with interest on the said arrears at the rate of 18% per annum from the date such amounts became due till their actual payment;

6. Respondent Nos. 2, 3 and 4 have filed their reply dated 23rd March, 2022 opposing the Petition. Respondent Nos. 2 to 4 contend that the VRS offered to its employees was a special one time package by way of “Golden Handshake” approved by the Government of India; In the

said scheme, the pension was commuted (100%) in full thereby reducing pension account to nil; Said VRS was completely voluntary in nature and the employees had complete freedom to either avail the benefits under the VRS and take voluntary retirement or to continue in employment; On taking VRS, the relationship between the Respondent No. 2 and the Petitioners ceased; Petitioners chose to opt for the VRS, as the same had much more lucrative benefits; and that the Petition filed after a period of 27 years is liable to be dismissed being hopelessly barred by delay.

7. Mr. Ramesh Ramamurthy, learned Advocate for the Petitioners has advanced oral arguments as well as tendered written submissions on 27.11.2025.

8. On 27th November, 2025 this Court has made the following order :

“1. This matter is listed in the Special Pension Board. On 25th September 2025, since Respondent Nos. 2 to 4 were not canvassing their submissions and Mr. Ramamurthy, representing the Petitioners had concluded the submissions, we granted one more opportunity to Respondent Nos. 2 to 4 to make their submissions through the learned Advocate.

2. *The Petition was treated as part-heard on 25th September, 2025. On 13th November, 2025, none appeared for Respondent Nos. 2 to 4. Nobody mentioned the matter. Yet we granted an adjournment, in the interest of justice, to enable Respondent Nos. 2 to 4 to file their written submissions. Even today, none appears for Respondent Nos. 2 to 4, either in the Court hall or through the video conferencing mode.*

3. *In view of the above, closed for Judgment.”*

9. Mr. Ramesh Ramamurthy, learned Advocate for the Petitioners by relying the decision of the Hon’ble Apex Court in the case of *Common Cause V/s. Union of India*¹ submits that the commuted portion of the pension should be restored after 15 years. He submits that Section 12 of the Pension Act, 1871, declares that any assignment in anticipation of pension is void. He submits that the Madras High Court in the case of *K. Ganeshan v/s. The Registrar, Central Administrative Tribunal & Ors.*² has interpreted Section 12 of the Pension Act, 1871 and has held that the commuted portion of the pension cannot be refused to be restored. He submits that the decision in the case *K. Ganeshan (supra)* was upheld by the Hon’ble Supreme Court³. He submits that

1 AIR 1987 SC 210.

2 Writ Petition No. 22207 of 2002 decided on 22.08.2007.

3 Civil Appeal No. 6048 of 2010 decided on 01.09.2016.

even in a case of commutation of 100% of pension the entire 100% has to be restored after 15 years commutation period is over. He submits that the Government of India has accepted the Judgment in *K Ganeshan (supra)* and has issued Office Memorandum dated 23.06.2017 on the subject of restoration of 100% of the commuted pension. He submits that Rule 10(A) of the CCS(Commutation of Pension) Rules direct restoration of commuted pension after 15 years. He therefore submits that though the Petitioners have commuted 100% of their pension under the VRS dated 21.05.1994, still the Petitioners are entitled to restoration of the entire 100% of the commuted pension after 15 years, which is after 21.05.2009. He submits that the act of the Respondent Nos. 2 to 4 in refusing to restore the commuted pension after 15 years of commutation is illegal.

10. From the contentions raised by the Petitioners, the points for consideration are :

- (i) Whether when the Petitioners having opted for VRS and 100% commutation of pension, Petitioners would be entitled to restoration of 100% commuted value of the Pension 15 years, after the commutation ?
- (ii) Whether the Petition filed by the Petitioners almost after

27 years from the receiving benefits under the VRS dated 21.05.1994 is barred by delay ?

11. The grievance agitated in the present Petition is the denial of restoration of the commuted amount of pension on the expiry of 15 years, from the date of its commutation.

12. Facts of the Petitioners having accepted the offer made vide the VRS dated 21st May, 1994 and they having voluntarily retired after receipt of all the payments made to them in terms of the VRS, as also the Petitioners having accepted full commutation of their pension, are not in dispute.

13. VRS which is subject matter of the present Petition was offered to the employees of the Respondent Nos. 2 to 4 on the following terms :

(i) Half a month's gratuity per year of service subject to a ceiling of Rs.1,00,000/- as admissible under the gratuity Rules of EIC/EIAs;

(ii) Ex-gratia payment equivalent to 1 1/2 months' emoluments (Pay + DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before normal date of retirement, whichever is less;

(iii) One or 3 month's pay in lieu of notice, where admissible, in terms of the conditions of service / appointment

of the employees;

(iv) Encashment of earned leave at the credit of employees up to a maximum of 240 days;

(v) Full matching CPF contribution from the Export Inspection Council / Agency side irrespective of whether such employees have completed 5 years of service. (Applicable to such employees if any who have not opted for the pension scheme)

(vi) Full commutation of pension.

(vii) Travel expense for the employee's and family for proceeding to home town or to the place where he / she intends to settle in India as per his/her entitlement under the TA Rules of EIC/EIAs;

(viii) Offer for VRS to remain valid for a period of 60 days from the date of issue of this letter, and

(ix) EIC to have the right to refuse the request for voluntary retirement in case of any employee without assigning any reason.

(x) Employee to either pay the amount of advances against him/her or agree for its adjustment in full, against payments that will be made under the Voluntary Retirement Scheme.

The employees desirous of availing of this scheme to fill the prescribed option form and submit to their respective Heads of Offices.

(xii) The option once exercised is final and cannot be withdrawn under any circumstance,

14. The Hon'ble Supreme Court in the case of *A.K. Bindal and Anr. v/s. Union of India & Ors.*⁴ in paragraph Nos. 34 and 35 in the context of voluntary retirement under a scheme has observed as follows :

“34. This shows that a considerable amount is to be paid to

⁴ 2003 (5) SCC 163.

an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as "golden handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

(Emphasis supplied)"

16. The Hon'ble Supreme Court in the case of *HEC Voluntary Retd. Employees Welfare Society v/s. Heavy Engineers Corporation Ltd.*⁵ in paragraph No. 11 has held as under :

"11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued

⁵ 2006 (3) SCC 708

for effective functioning of the industrial undertakings. Although the Company is “State” within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only is an invitation of offer floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable too. (See Bank of India v. O.P. Swarnakar [(2003) 2 SCC 721 : 2003 SCC (L&S) 200].)”

17. Petitioners who were occupying the post of Assistant Director, Stenographer Gr. I, Office Assistant, Section Officer, Additional Director, Accountant, etc., had the freedom to exercise their option and they were mature enough to weigh the pros and cons of the options which were available to them. Petitioners in their wisdom thought that in the fact situation VRS was a better option available and chose the same. Petitioners after 27 years from the time of execution of the VRS are seeking a declaration of clause (vi) of the VRS as void and ineffective against them.

18. Employees of the Export Inspection Agency, Delhi had questioned the VRS, the denial of the restoration of commuted pension

and grant of monthly pension under the Pension Rules, before the Delhi High Court. Similar and identical contentions were raised by the said employees in respect of the VRS in the said proceedings filed by *Pradeep Kumar & Ors. v/s. The Union of India & Ors.*⁶. The Delhi High Court after analyzing the entire scheme and the contentions of the employees, in the context of denial of grant of commuted pension after having received benefits under VRS, by placing reliance on its earlier decision in the case of *Prakash Saxena & Ors. v/s. The Union of India & Ors.*⁷ rejected the said proceedings on merits as well as on the ground of delay and laches.

19. The decisions in the case of *Pradeep Kumar (supra)* and *Prakash Saxena (supra)* of the Delhi High Court were questioned before the Hon'ble Supreme Court by way of Special Leave to Appeal (C) No. 4937 of 2020 and Civil Appeal No. 8226 of 2016. Vide order dated 25.04.2024, the Hon'ble Supreme Court has dismissed the Special Leave to Appeal (C) No. 4937 of 2020 and Civil Appeal No. 8226 of 2016 by observing as under :-

“ In these cases, the issue is whether under Voluntary Retirement Scheme of 1994, full commutation of pension be allowed or it ought to

6. LPA No. 303 of 2019 decided on 24.05.2019.

7. W.P. No.(c) 10212/2015 decided on 02.11.2015.

be one third.

The impugned order was passed relying upon the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises and others vs. Union of India and another (1996) 2 SCC 187.

After hearing the learned counsel for the parties and after thirty years down the line of the Scheme and the fact that the appellants/petitioners have received the benefit commutation of pension. of full at present, we do not deem it appropriate to deal with the issue in detail. At this stage, we are not inclined to interfere with the impugned order by afflux of time. Accordingly, we dispose of these Civil Appeals and Special Leave Petition leaving the question of law open.

Pending application(s), if any, stands disposed of.

TRANSFER PETITION (CIVIL) NO. 321 OF 2011
TRANSFER PETITION (CIVIL) NO. 323 OF 2011

In view of the aforesaid order passed today in Civil Appeal No. 8226 of 2016 and batch, learned counsel for the parties contend that these Transfer Petitions be treated as disposed of. Ordered accordingly.”

20. In the *Common Cause’s case(supra)*, Petitioners who were retired Government Servant had asked for striking down certain provisions of the commutation of pension rules applicable to civilian and defence pensioners as they permitted the Union of India to recover more than what is paid to the Pensioners upon commutation. Further request in the said Petition was for rationalizing provisions relating to

commutation.

21. In *K. Ganeshan(supra)*, the Petitioner an employee of the Deputy Controller, General of Accounts, who upon his resignation had raised an issue pertaining to the manner of commutation of pension of 1/3 and 2/3 part from prorata gratuity as prescribed under Rule 37A of the CCS Pension Rules.

22. Both the decisions relied by Mr. Ramesh Ramamurthy, learned Advocate for the Petitioners in the case of *Common Cause(supra)* and *K. Ganeshan (supra)* had different factual matrix.

23. We find that the challenge made by the Petitioners in the present Petition to be similar on facts as well as on law to the challenge that was raised in the case of *Pradeep Kumar (supra)* and *Prakash Saxena (supra)* before the Delhi High Court. Petitioners with open eyes opted for VRS., being aware of the terms and conditions, one of them being 100% commutation. Factually, the VRS as well as the parties to the proceedings before the Delhi High Court were same. The difference if any, is that the Petitioners before this Court are the employees of Export Inspection Agency, Mumbai whereas the employees before the Delhi High Court were Export Inspection Agency, Delhi. Neither the

oral submissions nor the written submissions canvassed on behalf of the Petitioners persuade us to take a different view, than the one expressed in the case of *Pradeep Kumar (supra)* and *Prakash Saxena (supra)*. The issues raised in the present Petition being considered and answered by the Delhi High Court and its decision being maintained by the Hon'ble Supreme Court, we follow the same.

24. The Petitioners have accepted the benefits under the VRS in the year 1994. Acceptance of VRS was without any protest or demur. This Petition was filed on 29th July, 2020.

25. In view of the above, we hold that the Petitioners having opted for VRS and 100% commutation of pension would not be entitled to restoration of commuted value of the Pension 15 years after the commutation. In addition, we dismiss the Petition on the ground of delay.

26. **Petition is dismissed**, with no orders as to cost.

27. Pending Interim Application (St.) No. 41014 of 2025 is disposed off.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)