MPBalekar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 18065 OF 2024

Sanjoy Kumar Das … Petitioner
V/s.
Employees Provident Fund
Organisation and Ors. … Respondents

Ms. Samiksha Kanani for petitioner.

Ms. Sonali Humane for respondent Nos. 1 & 2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 30, 2026

P.C.:

1. The present petitioner is placing challenge to the impugned order dated 21 December 2023, and such challenge is not made in vacuum but arises from certain practical difficulty created by said order. By that order, the respondent authority, namely Employees Provident Fund Organisation, has directed the petitioner to refund already settled amount together with interest, and only thereafter the request of the petitioner for transfer of claim is to be considered.

2. This direction, on plain reading, appears to reverse the sequence of consideration. Normally, entitlement is first examined and then consequence follows. Here, however, the authority has insisted upon prior compliance of refund, even before adjudication of request for transfer. This creates a situation where the petitioner is compelled to part with amount, without first knowing whether his claim for transfer would ultimately succeed or fail. Such condition, therefore, gives rise to grievance, as it places financial burden in advance and makes access to statutory benefit conditional upon prior restitution, which itself is under dispute.

3. I do not find any specific provision of law, rule, or scheme which authorises such direction of pre-refund or pre-deposit. An administrative or statutory authority must trace its action to some enabling provision. In absence of such provision, the action travels beyond jurisdiction. By issuing such direction, the authority in effect creates a new requirement akin to pre-deposit, which is generally found only in appellate provisions where statute expressly so provides. Here, the member is only seeking transfer of provident fund claim and not invoking any appellate remedy. Therefore, imposition of such condition results in creation of a new form of jurisprudence without legislative backing. This cannot be permitted, since it would allow authority to impose financial conditions at its discretion, thereby affecting rights of members without guidance of law.

4. It is no doubt true that the authority has power to examine validity of claim. If upon such examination, it finds that claim is not maintainable or has no basis in law, it is always open to the authority to reject the same by giving reasons. That power is inherent in adjudicatory function. However, such power cannot be stretched to impose conditions which are not contemplated under governing statute or scheme. There is clear distinction between rejecting a claim on merits and compelling compliance of a condition before even deciding the claim. The latter amounts to assumption of power which is not conferred. Therefore, the impugned orders dated 21 December 2023 and 12 March 2024, having imposed such unauthorized condition, cannot be sustained in law. They suffer from lack of jurisdiction and are liable to be set aside.

5. In consequence of above discussion, it becomes necessary to direct the authority to consider the claim of the petitioner independently and strictly in accordance with law. While doing so, the authority shall not insist upon any pre-deposit or prior refund as a condition precedent. The claim must be examined on its own merits, based on applicable provisions and factual material, without being influenced by earlier directions which have now been set aside.

6. Considering that the matter pertains to provident fund benefits, which are of financial importance to the member, the decision cannot be kept pending for long time. Hence, it is directed that the authority shall decide the claim of the petitioner within a period of eight weeks from today.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)