

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**MISC. APPLICATION NO. 28 OF 2019**  
**WITH**  
**ORIGINAL APPLICATION ST. NO. 3070 OF 2018**

DIST. : JALNA

Shrikant s/o Vishwambhar Deshmukh,) )  
Age. 59 years, Occu. : Pensioner, ) )  
R/o Tirumala Vihar, Plot No. C-22, ) )  
Flat No. 1, Behind Cidco Bus Stand, ) )  
N-1, Town Center, Cidco, Aurangabad. ) ..

**APPLICANT**

**V E R S U S**

1. The State of Maharashtra, ) )  
Through its Secretary, ) )  
School Education & Sports Deptt.) )  
Mantralaya, Mumbai – 32. ) )
2. The Deputy Director of Education,) )  
Aurangabad Division, ) )  
Near Bhadkal Gate, Aurangabad. ) )
3. The Education Officer, ) )  
(Continuing Education), ) )  
Zilla Parishad, Jalna, ) )  
Tq. & Dist. Jalna. ) )
4. The Accounts Officer, ) )  
Pay Verification Unit, ) )  
Adjacent Collector Office, ) )  
Aurangabad. ) ..

**RESPONDENTS**

-----  
APPEARANCE :- Shri A.D. Gadekar, learned Advocate for  
the applicant.

: Shri I.S. Thorat, learned Presenting Officer  
for the respondents.  
-----

-----  
**CORAM** : **Hon'ble Shri B.P. Patil, Acting Chairman**  
**RESERVED ON** : **5<sup>th</sup> November, 2019**  
**PRONOUNCED ON** : **8<sup>th</sup> November, 2019**  
-----

### **ORDER**

1. The applicant has filed the present application for condonation of delay of 4 years and 17 days caused in filing the accompanying Original Application St. no. 3070/2018.

2. It is contention of the applicant that he retired from the Government service w.e.f. 31.11.2017 and at that time he was serving on class-III post. It is his contention that the respondents had recovered an amount of Rs. 2,15,752/- from him on account of excess payment made to him by the order dated 15.2.2014. It is his contention that after retirement he came to know about the judgment of Hon'ble Supreme Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596**. Therefore he approached the respondents and filed an application / representation dated 23.1.2018 claiming refund of recovered amount. But the respondents had not taken any action on the same and therefore he filed the accompanying Original Application

bearing st. 3070/2018 before this Tribunal. Because of the above said reason the delay of 4 years and 17 days has been caused in filing the Original Application. The said delay has been caused due to ignorance of judgment of the Hon'ble Supreme Court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra). Therefore he prayed to condone the delay of 4 years and 17 days caused in filing the Original Application.

3. The respondent nos. 1 & 2 filed affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the applicant made an application dtd. 23.1.2018 for refund of the amount recovered from him, on the basis of the judgment of Hon'ble Supreme Court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra). It is their contention that in view of Circular dated 29.4.2009 the employee has to give an undertaking that if there would be any wrong pay fixation and if there would be any excess payment made to the employee due to wrong pay fixation he would be liable to repay the same to the Government. In view of this the excess amount paid to the applicant had been recovered. It is their contention that the applicant slept over his right and had not filed Original Application in time. Therefore it requires to be rejected in view of the decision of Hon'ble Supreme Court in **Special Leave**

**Petition (Civil) Nos. 6609 – 6613 of 2014 (Brijesh Kumar &**

**Ors. Vs. State of Haryana & Ors.)** decided on 24.3.2014, wherein

it is held that, if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the Court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person. Applicant is not diligent in approaching the Tribunal and therefore the delay of 4 years and 17 days caused in filing the O.A. st. 3070/2018 is inordinate and it is not properly explained by the applicant. Therefore they prayed to reject the M.A.

4. I have heard the arguments advanced by Shri A.D. Gadekar, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

5. Admittedly the applicant was serving as a Supervisor in the office of the Education Officer (Continuing Education), Zilla Parishad, Jalna. He retired on 30.11.2017 from the Group C post. Admittedly wrong pay of the applicant has been fixed by the respondents and later on the said mistake has been noticed by them. Therefore they re-fixed the pay of the applicant by the order dated 3.12.2013 and directed recovery of Rs. 2,15,752/- from the

applicant and accordingly the said amount has been recovered from him by the order dtd. 15.2.2014. Admittedly the applicant has not filed the Original Application immediately after passing the orders dated 3.12.2013 and 15.2.2014 before this Tribunal within the prescribed period of limitation. Admittedly there is delay of 4 years and 17 days in filing accompanying O.A.

6. Learned Advocate for the applicant has submitted that wrong pay of the applicant has been fixed by the respondents and the excess payment was made to him accordingly and it was recovered by the respondents from the applicant in the year 2014. It is his submission that the said recovery is impermissible in view of the guidelines given by the Hon'ble Supreme Court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra). He has submitted that the applicant could not be able to approach this Tribunal immediately as he has no knowledge regarding the decision of the Hon'ble Supreme court. After retirement he came to know about the judgment of Hon'ble Supreme Court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra) and thereafter he filed the present Original Application. Because of ignorance of the applicant regarding the said judgment the delay of 4 years and 17

days has been caused and therefore in the interest of justice he prayed to condone the said delay.

7. Learned Presenting Officer has submitted that the amount paid in excess to the applicant has been recovered in the year 2014. The pay of the applicant has been re-fixed by the order dated 3.12.2013. Thereafter the amount of Rs. 2,15,752/- has been recovered from the applicant by the order dated 15.2.2014. The applicant has not challenged both the orders within the prescribed period of limitation. He filed an application / representation dated 23.1.2018 to the respondents for refund of recovered amount after his retirement and there is inordinate delay in filing the Original Application. He has submitted that ignorance of law or decision of Hon'ble Supreme Court is not a just ground to condone the delay of 4 years and 17 days caused in filing O.A. The applicant has not explained the delay by giving satisfactory reasons. In the absence of satisfactory reasons the delay cannot be condoned. Therefore he prayed to reject the application. He has further submitted that the applicant has slept over his right for a long period and therefore he cannot take benefit of decisions of this Tribunal or decision of Hon'ble Supreme Court. He has placed reliance on the judgment of Hon'ble Supreme Court in **Special Leave Petition (Civil) Nos.**

**6609 – 6613 of 2014 (Brijesh Kumar & Ors. Vs. State of Haryana & Ors.)** and prayed to reject the Misc. Application.

8. I have gone through the documents placed on record. Respondents re-fixed the pay of the applicant by the order dated 3.12.2013 and directed recovery of Rs. 2,15,752/- from him by the order dtd. 15.2.2014. Applicant has not challenged the said orders in time. He retired on 30.11.2017 and even after his retirement he has not challenged the said orders within a reasonable time. There is delay of 4 years and 17 days in filing the Original Application. Only reason given by the applicant for condonation of said delay is that he has no knowledge about the judgment of the Hon'ble Supreme court in case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra). It seems that the applicant slept over his right for a long period. He was not diligent in exercising the right. Even after knowledge about the decision of Hon'ble Supreme Court in the above case he has not approached the Tribunal within the reasonable time. There are laches and delay on the part of the applicant. Therefore in my view there is no just, sufficient and plausible reason to condone the delay and therefore the delay cannot be condoned.

9. I have gone through the decision of Hon'ble Supreme Court in case of **Brijesh Kumar & Ors. Vs. State of Haryana & Ors.** (supra), wherein it is observed as follows :-

*“7. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained every day by the Courts.*

*The law of limitation is enshrined in the legal maxim Interest Reipublicae Ut Sit Finis Litium” (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

*8. The Privy Council in **General Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim**, AIR 1941 PC 6, relied upon the writings of Mr. Mitra in Tagore Law Lectures 1932 wherein it has been said that “a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.”*

*9. In **P.K. Ramachandran v. State of Kerala & Anr.**, AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:-*

*“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”*

*11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of*



*delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.*

*It has further observed as follows:-*

*“12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.*

**13. In State of Karnataka & Ors. v. S.M. Kotrayya & Ors.**, (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

**14. Same view has been reiterated by this Court in Jagdish Lal & Ors. v. State of Haryana & Ors.**, AIR 1997 SC 2366, observing as under:-

*“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”*

15. ***In M/s. Rup Diamonds & Ors. v. Union of India & Ors.***, AIR 1989 SC 674, this Court considered a case where petitioner wanted to get the relief on the basis of the judgment of this Court wherein a particular law had been declared *ultra vires*. The Court rejected the petition on the ground of delay and laches observing as under:-

*“There is one more ground which basically sets the present case apart. Petitioners are reagitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else’s case came to be decided.”*

10. I have no dispute regarding the principles laid down by the Hon’ble Supreme court in the above case and said principles are most appropriately applicable in the present case. Applicant has not given sufficient reasons to condone the delay and therefore an inordinate delay caused in filing Original Application cannot be condoned. There is no merit in the Miscellaneous Application. Consequently Misc. Application deserves to be dismissed.

11. In view of the discussion in foregoing paragraphs the Misc. Application No. 28/2019 stands dismissed. Consequently the registration of Original Application St. no. 3070/2018 stands refused. There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 8<sup>th</sup> November, 2019**