

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC APPLICATION NO.149 OF 2022
WITH
MISC APPLICATION NO.150 OF 2022
IN
ORIGINAL APPLICATION NO.1158 OF 2016
WITH
ORIGINAL APPLICATION NO.352 OF 2017
WITH
ORIGINAL APPLICATION NO.353 OF 2017**

DISTRICT: MUMBAI

1. The Dairy Manager.)
Mother Dairy Kurla, having office)
at Nehru Nagar, Kurla, Mumbai)
2. The Dairy Manager.)
Worli Dairy, Having Office at Worli,)
Mumbai – 400 018.)
3. The Chief Executive Officer.)
Aarey Milk Scheme, Having office at)
Aarey Milk Colony, Goregaon,)
Mumbai – 400 065.)
4. The Dairy Manager.)
Central Dairy, Having office at)
Aarey Milk Colony, Goregaon,)
Mumbai – 400 065.)
5. The General Manager.)
Greater Mumbai Milk Scheme,)
Worli, Having office at Worli,)
Mumbai – 400 018.)
6. The Dairy Development Commissioner))
Dairy Development, M.S, Mumbai)
Having office at Administrative)
Building, A.G. Khan Marg, Worli,)
Mumbai – 400 018.)

7. The Principal Secretary,)
 Agriculture, Dairy Development,)
 Animal Husbandry & Fisheries)
 Department [Dairy Development],)
 Having Office at Mantralaya,)
 Mumbai – 400 032.)
**)...Applicants/
 (Original Respondents)**

Versus

1. Smt. Supriya Kiran Goraksha.)
 Age : 59 Yrs, Occu. Retired Accounts)
 Clerk, Class-III in the Office of)
 Chief Executive Officer, Aarey Milk)
 Colony, Goregaon, Mumbai and)
 R/o. C/401, Riddhi-Siddhi Building,)
 Vajira Naka, Borivali, Mumbai – 91.)

2. Smt. Prabha Anand Bhage.)
 Age : 66 Yrs, Occu.: Retired Accounts)
 Clerk, Class-III in the Office of)
 Incharge Manager, Central Dairy,)
 Aarey, Goregaon, Mumbai – 65.)
 R/o. 621, Adarsh Nagar, Aarey Milk)
 Colony, Old Hill Quarter, Near Sai)
 Baba Mandir, Goregaon (E),)
 Mumbai – 400 065.)

3. Smt. Rekha Arun Honrao.)
 Age: 63Yrs, Occ. Retired Accounts)
 Clerk, Class-III, in the office of the)
 General Manager, Worli Dairy,)
 A.G. Khan Road, Worli,)
 Mumbai - 400 018, and Residing at)
 A2/6, A2,] Worli Sea Side Co-op.)
 Housing] Society, Narayan Pujari)
 Nagar, A.G. Khan Road, Worli,)
 Mumbai - 400 018.)

4. Smt. Rajlaxmi Prabhakar Gawas.)
 Age : 66 Yrs, Occ. Retired Accounts)
 Clerk, Class-III, in the office of the)
 General Manager, Worli,)
 Dairy, A.G. Khan Road, Worli,)

Mumbai - 400 018, R/o. A-501,)
 Marbal Arch, Near Mittal College,)
 Malad [W], Mumbai – 64.)

5. Smt. Amla Ashok Parab.)
 Age : 59 Yrs, Occ. Retired Accounts)
 Clerk, Class-III, in the office of the)
 Dairy Manager, Worli Dairy,)
 A.G. Khan Road, Worli,)
 Mumbai-400 018, RIO. 33/C,)
 Madhukesh, Tukaram Javji Road,)
 Mumbai.)

6. Smt. Ruti Shirish Sule.)
 Age : 62 Yrs, Occ. Retired Accounts)
 Clerk, Class-III, in the office of Dairy)
 Manager, Mother Dairy, Nehru)
 Nagar, Kurla [E], Mumbai - 400 024.)
 R/o. B-23, Sindhutirtha CBS,)
 Makhamali Talav, Thane [W]-400601.)

7. Smt. Shubhada Y. Barnaikar.)
 Age : 62 Yrs, Occ. Retired Accounts)
 Clerk, Class-III in the Office of Dairy)
 Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/at A/9, Ravi Darshan Co-op.)
 Hsg. Soc., Arunoday Nagar, Near)
 Sambhaji Maidan, Mulund (E),)
 Mumbai – 400 081.)

8. Smt. Sushma D. Pagare.)
 Age : 63 Yrs, Occu.: Retired Accounts)
 Clerk, Class-III, in the office of Dairy)
 Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. Dena Deep CHS, 11th Parijat,)
 2nd Floor, 90 Ft. D.P. Road,)
 Mulund (E), Mumbai – 400 081.)

9. Smt. Sunanda U. Mehendale.)
 Age : 59 Yrs., Occu. Retired Accounts)
 Clerk, Class-III, in the office of Dairy)

Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. 11, Aparna, 353/16, R.B. Mehta)
 Road, Ghatkopar (E), Mumbai – 77.)

10. Smt. Anupama V. Chavan.)
 Age : 59 Yrs., Occu. Retired Accounts)
 Clerk, Class-III, in the office of Dairy)
 Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. 1, Janmans CHS, Vahatuk)
 Nagar, Kevanipada, Behind Amboli)
 Church, Jogeshwari (W),)
 Mumbai – 400 102.)

11. Smt. Sawati S. Ghosalkar.)
 Age “ 62 Yrs, Occu. Retired Accounts)
 Clerk, Class-III, in the office of Dairy)
 Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. C/38, Jaideep Laxmi Co-op.)
 Hsg.Soc, Devi Chowk, Shastri Nagar,)
 Dombivali (W), District : Thane.)

12. Smt. Sushama S. Deshpande.)
 Age : 64 Yrs., Occu. Retired Accounts)
 Clerk, Class-III in the office of Dairy)
 Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. 5/2, Shukoendu, Datar Colony,)
 Bhandup (E), Mumbai – 400 042.)

13. Smt. Seema J. Vaidya.)
 Age : 60 Yrs, Occu. Retired Accounts)
 Clerk, Class-III in Greater Mumbai)
 Milk Scheme, Worli Dairy, A.G. Khan)
 Road, Worli, Mumbai – 18 and)
 R/o. 358/B, Gangaram Khatri Wadi,)
 Thakurdwar, J.S.S. Road,)
 Mumbai – 400 002.)

14. Smt. Aparna C. Nandoskar.)
 Age : 68 Yrs, Occu. Retired Accounts)

Clerk, Class-III in the office of Dairy)
 Manager, Greater Mumbai Milk)
 Scheme, Worli Dairy, A.G. Khan)
 Road, Worli, Mumbai – 18 and)
 R/o. 38/2751, Maharashtra)
 Housing Board, Kalachowki,)
 Mumbai – 400 033.)

15. Smt. Suchita V. Desai.)
 Age : 63 Yrs, Occu.: Retired Accounts)
 Clerk, Class-III in the office of Dairy)
 Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. 501, Shree Datta Niwas,)
 Datar Colony, V.S. Marg,)
 Bhandup (E), Mumai - 400 042.)

16. Smt. Sulaxana B. Mokashi.)
 Age : 68 Yrs, Occu.: Retired Ward)
 Cashier, Class-III in the office of)
 Dairy Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. 1, New Soni Co-op. Housing)
 Society, Opp. Forest Office, Naupada)
 Road, Thane (W) – 400 602.)

17. Smt. Nilima R. Chaudhari.)
 Age : 60 Yrs, Occu. : Retired)
 Accounts Clerk, Class-III in the)
 Office of Dairy Manager, Mother)
 Dairy, Nehru Nagar, Kurla (E),)
 Mumbai – 24 and R/o. B-9, Nav-)
 Indera Prashtha Co-op. Hsg. Soc.,)
 Rambaug, Lane No.4, Murbad Road,)
 Kalyan (W), District : Thane.)

18. Smt. Hemalata A. Dhanawade.)
 Age : 62 Yrs, Occu.: Retired Accounts)
 Clerk, Class-III in the office of)
 Dairy Manager, Mother Dairy, Nehru)
 Nagar, Kurla (E), Mumbai – 24 and)
 R/o. 12-B/40, New BDD Block,)
 G.K. Road, Naigaon, Dadar,)

Mumbai – 400 014.)

19. Smt. Prabhavati P. Kamble.)
 Age : 61 Yrs, Occu.: Retired)
 Accounts Clerk, Class-III in the)
 Office of General Manager,)
 Worli Dairy, A.G. Khan Road, Worli,)
 Mumbai – 18 and R/o. Plot No.79/)
 A-402, Gorai Shivsagar Co-op. Hsg.)
 Soc, Gorai-II, Borivali (W),)
 Mumbai – 400 092.)

20. Shri Chandrakant S. Telang.)
 Age : 61 Yrs, Occu.: Retired)
 Accounts Clerk, Class-III in the)
 Office of Dairy Manager,)
 Worli Dairy, A.G. Khan Road, Worli,)
 Mumbai – 18 and R/o. 15/A,)
 1st Floor, 103, Nandraj CHS)
 Manisha Nagar, Kalwa, Dist : Thane.)

21. Shri Bhagwan S. Narse.)
 Age : 65 Yrs, Occu. : Retired)
 Accounts Clerk, Class-III in the)
 Office of Dairy Manager,)
 Mother Dairy, Nehru Nagar,)
 Kurla (E), Mumbai – 24 and R/o.)
 B-1, Neelkanth Prerana Building,)
 No.3, Co-op. Hsg. Soc, Vishnunagar,)
 Dombivali (W), District : Thane.)

22. Mr. Vishwas D. Manjrekar.)
 Being heir and legal representative)
 [Husband] of deceased Government)
 Servant by name Late Smt. Urmila)
 V. Manjrekar, Age : Adult,)
 Dosti Vihar, Near Vartak Nagar)
 Nagar, Thane (W).)

23. Mrs. Shaila Dilip Narvekar.)
 Age : 60 Yrs, Occu.: Nil, Retired as)
 Accounts Clerk, Class-III in the office of)
 The Dairy Manager, Mother Dairy, Kurla,)

Nehru Nagar, Kurla (E), Mumbai-400 024.)
 R/o. A/5, Om-Brahmagiri CHS Ltd,)
 Sunil Kambli Marg, Kurla (E), Mumbai – 24.)

24. Mrs. Kalpana S. Gadkari.)
 Age : 60 Yrs, Occu.: Nil, Retired as)
 Accounts Clerk, Class-III in the office of)
 The Dairy Manager, Mother Dairy, Kurla,)
 Nehru Nagar, Kurla (E), Mumbai-400 024.)
 R/o. A/2801, 'Vijeta' Dosti Vihar, Pokhran)
 Road No.1, Vartak Nagar, Thane (W).)... **Respondents**
(Original Applicants)

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Applicants (Original Respondents)

Shri Arvind V. Bandiwadekar, learned Advocate for the Respondents (Original Applicants).

CORAM : A.P. Kurhekar, Member (J)

DATE : 22.03.2022.

JUDGMENT

1. These M.As are filed for condonation of delay of one year and nine months and to modify the order dated 09.03.2022 whereby 9% interest was granted to the Applicants.

2. Heard Smt. K.S. Gaikwad, learned Presenting Officer for the Applicants (Original Respondents) and Shri A.V. Bandiwadekar, learned Advocate for the Respondents (Original Applicants).

3. The perusal of record reveals that the O.A. No.1158/2016 was decided with O.A. No.352/2017 and O.A. No.353/2017 by common judgment dated 09.03.2020. These O.As. were filed by employees of Dairy Development Department against the order of recovery and downgrading of pay and pension. The Applicants retired from Government services in between 2006 & 2015 but their retiral benefits were withheld, and they were constrained to file Original Applications

before this Tribunal. The perusal of judgment dated 09.03.2022 passed by the Tribunal reveals that after retirement the Government in view of objection of pay verification unit downgraded pay scale of the Applicants affecting their pension. Tribunal held that the Applicants were entitled to the pay scale which they were rightly getting at the time of retirement. As such it was not the case pertaining to recovery of alleged excess payment but it was of downgrading of pay scale which they were rightly getting at the time of retirement. The Tribunal therefore quashed order of recovery and directed to release retrial benefits with consequential service benefits within three months. The Applicants have been retired long back, and therefore directions were given to refund amount of recovery from them within three months from the date of order and failing which amount shall carry interest at the rate of 9% from the date of order till actual payment.

4. Now M.As are filed to waive the order of grant of 9% interest on the amount to be refunded.

5. Learned P.O. submits that amount is already refunded to the Applicants which is not disputed by learned Advocate for the Applicant.

6. Now question remains whether the order of interest can be waived as claimed in M.A.

7. Learned P.O. submits that due to COVID-19 surge and Pandemic situation M.A. cannot be filed within one month and secondly since amount is already paid tax liability should be waived.

8. Per Contra, Shri A.V. Bandiwadekar, learned Advocate for the Applicants submits that the Respondents have not complied with the order passed by the Tribunal and was constrained to file C.A. No.19/2020 which is still pending before Division Bench. According to him even in C.A. Respondents took time of nearly two years to comply

the order passed by the Tribunal with the assurance that Respondents are complying the order.

9. Admittedly, the judgment dated 09.03.2020 had attended finality since it is not challenged before Hon'ble High Court.

10. Insofar as interest part is concerned Tribunal has granted interest considering hardship faced by the Applicants for long time. Indeed, the Tribunal has granted three months time to refund the amount and it is only in case of failure to refund the amount within three months interest was to be paid at the rate of 9% from the date of order till actual payment.

11. Indeed the interest was granted on the amount to which the Applicants were legally entitled but it was recovered from them and utilized by the Respondents. It is in that context and situation Tribunal has granted 9% interest if amount is not refunded within three months. As such, the Tribunal has given enough time of three months to refund the amount but it was not paid within three months and the Applicants were constrained to file C.A. No such application for extension of time for the compliance of order is filed before this Tribunal.

12. These M.As to waive interest are now filed after nearly two years from the date of order. Since, the Applicants were entitled to the amount wrongly recovered from them Respondents cannot escape their liability to pay the same with interest since it is not paid within three months as directed by the Tribunal.

13. Basically it was for Respondents to demonstrate how the order of interest is incorrect so that it could be waived. However, in this behalf nothing is forthcoming, this being the position, order passed by the Tribunal it cannot be modified in such a manner by filing M.A. This

M.A. is nothing but attempt to deprive retired Government servant of their legitimate dues.

14. Indeed, as pointed out by learned Advocate for the Applicants as seen from the record General Manager, Greater Mumbai by his letter dated 02.02.2021 requested C.P.O. to file M.A. to waive condition of interest. However, no such steps were taken in pursuance of the letter dated 02.02.2021 within reasonable time. It is on 16.03.2022 after nearly about one year from the date of letter of General Manager, Worli Dairy, present M.A. is filed.

15. Notably, learned Advocate for the Applicant has tendered letter dated 08.03.2022 issued by the Government addressed to The Commissioner, Dairy Development Department giving direction to fix responsibility upon the concerned for delay and payment of interest to the Applicants. Thus it appears that at one hand the Government is directing the Commissioner, Dairy Development Department to fix the responsibility for payment of interest and on the other hand General Manager, Worli Dairy instead of complying the said order has filed present M.A. to waive the interest.

16. In view of above, judicial order cannot be modified by filing such belated M.A. without challenging it before Higher forum or without filing review which is again subject to constrains of order 47 Rule 1 of C.P.C. This is nothing but abuse of process of law. M.A for waving interest is not at all maintainable and is liable to be dismissed.

17. Accordingly both the M.As are dismissed with no order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 22.03.2022

Dictation taken by: N.M. Naik.

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