

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.351 OF 2020
IN
ORIGINAL APPLICATION NO.246 OF 2019**

DISTRICT : MUMBAI

Shri Pandurang Khandu Bodake)
Age : 65 Yrs., Occu.: Retired as)
Clerk-Typist, Law & Judiciary Department,)
Mantralaya, Mumbai and residing at)
362/B, Jijamata Nagar, Kalachowky,)
Mumbai – 400 033.)...**Applicant**

Versus

The State of Maharashtra.)
Through Secretary (Law), Law & Judiciary)
Department, Mantralaya, Mumbai – 32.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 18.06.2021

JUDGMENT

1. This is an application for condonation of delay under Section 5 of Limitation Act filed in pending O.A.No.246/2019.

2. Shortly stated facts giving rise to the O.A. and M.A. are as under :-

The Applicant stands retired as Clerk-Typist on 31.07.2013 from the establishment of Respondent No.1. While he was in service, it was

noticed that the benefit of Assured Career Progression Scheme (ACPS) was granted to him in 2005. Before retirement, when service book was sent to Pay Verification Unit, it was revealed that Applicant was not entitled to the said benefit. Therefore, his pay was revised withdrawing the benefit of ACPS, which was already granted to him. It was noticed that sum of Rs.4,82,975/- was paid in excess. The Applicant was due to retire on 31.07.2013. The Applicant, therefore, deposited an amount of Rs.4,82,975/-, which was paid to him in excess. He stood retired on 31.07.2013.

3. The Applicant contends that later in the year 2018, he came to know about the decision of Hon'ble High Court, Aurangabad Bench whereby directions were given to refund alleged excess payment recovered from Police Personnel from gratuity and other retiral benefits **(Writ Petition No.695/2016 [Prabhakar More & Ors. Vs. State of Maharashtra] decided on 12.02.2018)**. The Applicant, therefore, made representation on 14.02.2018 to Respondent No.1 for refund of Rs.4,82,975/- in view of the said decision. However, it was not responded. Therefore, the Applicant has filed the O.A. on 12.03.2019. Reliance is also placed on the decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.

4. O.A. was resisted by the Respondent *inter-alia* contending that because of wrong benefit of ACPS, an objection was raised by Pay Verification Unit and accordingly, it was corrected. Sum of Rs.4,82,975/- was found paid in excess. The Applicant himself deposited the said amount in Treasury. As regard decision in **Rafiq Masih's** case (cited supra), the Respondent contends that the amount was paid by the Applicant much before the decision of Hon'ble Supreme Court in **Rafiq Masih's** case, and therefore, the Applicant is not entitled for the relief claimed. The issue of limitation has been also raised by the Respondent.

5. It is on this background, during the pendency of O.A, the Applicant has filed M.A. for condonation of delay, which is opposed by the Respondent contending that the explanation sought to be given by the Applicant that in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case and decision of Hon'ble High Court in **Writ Petition No.695/2016**, the delay has to be condoned is totally unpalatable. The Respondent, therefore, contends that O.A. is barred by limitation and deserves to be dismissed.

6. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

7. Shri Bandiwadekar, learned Advocate for the Applicant submits that in the matter of condonation of delay, the Tribunal is required to adopt liberal approach so as to advance substantial justice and further submits that in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, the recovery of excess amount paid to a Government servant, particularly Group 'C' from his retiral benefits is not permissible. He further referred to the decision of Hon'ble High Court, Aurangabad Bench in **Writ Petition No.695/2016** wherein directions were given for refund of amount recovered by the Department from retiral benefits. He has pointed out that in the said matter, the Petitioners therein stood retired in between 2011 to 2013, but relief was granted to them in view of decision in **Rafiq Masih's** case. He, therefore, submits that taking sympathetic and liberal view of the matter, the delay deserves to be condoned.

8. Per contra, Ms. S.P. Manchekar, learned C.P.O. submits that the Applicant has deposited excess amount of Rs.4,82,975/- in Treasury on 15.06.2013 at his own and it is not a case of recovery from retiral benefits. She has further pointed out that the decision in **Rafiq Masih's** case was delivered by Hon'ble Supreme Court on 18.12.2014. Whereas, in the present case, the amount was paid by the Applicant much before

the said decision. She has further canvassed that there was no such direction in **Rafiq Masih's** case to refund the amount already paid, and therefore, the issue cannot be allowed to re-open, otherwise it would open flood-gate of such time barred litigation.

9. True, while considering the application for condonation of delay, the Tribunal/Court is required to adopt justice oriented approach, so as to advance substantial justice. However, at the same time, there has to be sufficient and reasonable explanation and in absence of it, the delay cannot be condoned.

10. Indisputably, the Applicant himself at his own deposited an excess amount of Rs.4,82,975/- in Treasury on 15.06.2013 having found paid excess amount towards wrong fixation of pay. As such, there is no denying that the Applicant was not entitled to pay scale granted to him. The issue of excess payment was noticed by Pay Verification Unit much before retirement of the Applicant and importantly, the Applicant himself has deposited the said excess amount on 15.06.2013 before his retirement. He retired on 31.07.2013. Suffice to say, this is not a case where amount has been recovered forcibly from retiral benefits.

11. All that, the Applicant want to take the benefit of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, which was delivered on 18.12.2014. Whereas, in the present case, the Applicant stands retired much before the decision in **Rafiq Masih's** case.

12. According to Applicant, he came to know about his entitlement for refund of amount from Newspaper wherein the decision of Hon'ble High Court in **Writ Petition No.695/2016** was reported. True, in the said matter, directions were given to refund excess payment recovered from Police Personnel who were retired in between 2011 to 2013. That decision was rendered relying on the decision of Hon'ble Supreme Court in **Rafiq Masih's** case. However, distinguishing factor is that the said directions were issued by Hon'ble High Court in its Writ jurisdiction.

There is no limitation for filing Writ Petition before Hon'ble High Court. Whereas, this Tribunal is governed by Administrative Tribunals Act, 1985, which provides period of limitation for filing O.A. As per Section 21 of Administrative Tribunals Act, the O.A. ought to have been filed within one year from the date of cause of action. In the present case, the Applicant stands retired on 31.07.2013, and therefore, cause of action accrued to him on the date of retirement and he was required to file O.A. within one year. However, he filed O.A. in 2019. As such, there is delay of five years in filing O.A.

13. As rightly pointed out by the learned C.P.O. that the Applicant has deposited the amount in Treasury on 15.06.2013 and the decision of Hon'ble Supreme Court in **Rafiq Masih's** case was delivered on 18.12.2014. Thereafter, the Applicant did not take any steps for five years and filed this O.A. in 2019. In such situation, if delay is condoned on specious ground that he came to know it belatedly, then it would amount to re-open thousands of matters wherein recovery is already made much before the date of decision of Hon'ble Supreme Court and it would open floodgate of litigation, which I am afraid is not permissible.

14. As stated above, the cause of action accrued to the Applicant at the most on 31.07.2013 when he stood retired. As such, he ought to have filed O.A. within one year, as stipulated under Section 21 of Administrative Tribunals Act. But he remained silent for five years. In other words, he was not vigilant and slept over his right, if any.

15. The submission advanced by the learned Advocate for the Applicant that Applicant came to know about the decision of Hon'ble Supreme Court in **Rafiq Masih's** case from Newspaper in 2018, and therefore, limitation starts from the date of knowledge is totally misconceived. As stated above, the cause of action accrued to the Applicant on the date of retirement i.e. on 31.07.2013 and he ought to have filed O.A. on or before 31.07.2014 but filed it on 12.03.2019, which is hopelessly barred by limitation.

16. In so far as the decision in **Rafiq Masih** of Hon'ble Supreme Court is concerned, there is no denying that the recovery of excess amount from retired Government servant is not permissible. Indeed, it is prospective in operation. Whereas, in the present case, the Applicant at his own deposited the amount by Challan on 15.06.2013 much before the decision of Hon'ble Supreme Court in **Rafiq Masih's** case. Therefore, in my considered opinion, he cannot be said entitled for refund of the amount. Apart, basically, the O.A. is filed after expiration of five years, and therefore, being barred by limitation and it is not at all maintainable.

17. The totality of aforesaid discussion leads me to sum-up that there is no sufficient ground to condone the delay and O.A. is hopelessly barred by limitation. Hence, the following order.

ORDER

- (A) M.A.No.351 of 2020 is dismissed.
- (B) Resultantly, O.A.246 of 2019 being barred by limitation also stands dismissed.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 18.06.2021

Dictation taken by :

S.K. Wamanse.

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