

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**M.A. 51 OF 2019 in O.A.112 OF 2019 WITH  
M.A. 60 OF 2019 in O.A.125 OF 2019 WITH  
M.A. 61 OF 2019 in O.A.126 OF 2019 WITH  
M.A. 79 OF 2019 in O.A.151 OF 2019 WITH  
M.A. 80 OF 2019 in O.A.152 OF 2019 WITH  
M.A. 81 OF 2019 in O.A.153 OF 2019 WITH  
M.A. 99 OF 2019 in O.A.178 OF 2019 WITH  
M.A. 108 OF 2019 in O.A.199 OF 2019 WITH  
M.A. 109 OF 2019 in O.A.200 OF 2019 WITH  
M.A. 110 OF 2019 in O.A.201 OF 2019 WITH  
M.A. 111 OF 2019 in O.A.202 OF 2019 WITH  
M.A. 214 OF 2019 in O.A.493 OF 2019 WITH  
M.A. 215 OF 2019 in O.A.404 OF 2019 WITH  
M.A. 237 OF 2019 in O.A.434 OF 2019 WITH  
M.A. 238 OF 2019 in O.A.435 OF 2019 WITH  
M.A. 264 OF 2019 in O.A.450 OF 2019**

**DISTRICT : PUNE**

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**M.A.51 OF 2019 in O.A.112 OF 2019**

Subhash Bhiku Chumbalkar, )  
Occ. Retired, )  
R/at Bldg No.4, Flat No.A/7, Vitthalwadi, )  
Vishratinagar, Sinhagad Road, )  
Hingne Khurd, Pune - 411051. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Pune City, Pune 411001. )...**Respondent**

**With**

**M.A.60 OF 2019 in O.A.125 OF 2019**

Shri Satish Jagannath Mane, )

Occ. Retired, )  
R/at S.No.92/2, Gokul Nagar, Lane No.3, )  
Katraj-Kondwa Road, Kondhwa, )  
Pune - 411048. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Pune City, Pune 411001. )...**Respondent**

**With**

**M.A.61 OF 2019 in O.A.126 OF 2019**

Shri Kashinath Shankar Jagtap, )  
Occ. Retired, )  
R/at S.No.19, Pavikiran Bldg., )  
Shivaji Chowk, Gondhalenagar, )  
Hadapsar, Pune-411028. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Pune City, Pune - 411001. )...**Respondent**

**With**

**M.A.79 OF 2019 in O.A.151 OF 2019**

Shri Bhimashankar Gorakhnath Dilpak, )  
Occ. Retired, )  
R/at At post Tandulwadi, )  
Taluka Baramati, District : Pune. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Pune City, Pune 411001. )...**Respondent**

**With**

**M.A.80 OF 2019 in O.A.152 OF 2019**

Shri Ashok Ramchandra Yadav, )  
Occ. Retired, )  
R/at Shivshakti Society Dattakrupa, )  
S.No.42/2, Ganeshnagar, Vadgaonsheri )  
Pune - 411014. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Pune City, Pune 411001. )...**Respondent**

**With**

**M.A.81 OF 2019 in O.A.153 OF 2019**

Shri Suresh Ramchandra Pawar, )  
Occ. Retired, )  
R/at Suvarna Surya Niwas, Near Daund )  
Shetaki Farm, Opp. M.S.E.B. Colony, )  
Daund Patas Road, Taluka Daund, )  
District : Pune. )...**Applicant**

**Versus**

The Superintendent of Police, )  
Pune Rural, Chavan nagar, )  
Pashan Road, Pune - 411 008. )...**Respondent**

**With**

**M.A.99 OF 2019 in O.A.178 OF 2019**

Shri Manohar Laxman Damse, )  
 Occ. Retired, )  
 R/at At post Kondhwal, (Gavade Wadi) )  
 Taluka Ambegaon, Dist.-Pune. )...**Applicant**

**Versus**

1. The Conservator of Forest, )  
 (Wild Life) Van Bhavan, 3<sup>rd</sup> Floor, )  
 Pune-411016. )
2. The Accountant General (I) )  
 Maharashtra, 101 Maharshi Karva )  
 Road, Mumbai : 400 021. )...**Respondent**

**With****M.A.108 OF 2019 in O.A.199 OF 2019**

Shri Shashikant Tulshiram Chandanshive,) )  
 Occ. Retired, )  
 R/at 39, New Khadki Police Line, )  
 Near Khadki Police Station, Khadki, )  
 Pune-411003. )...**Applicant**

**Versus**

The Commissioner of Police, )  
 Pune City, Pune 411001. )...**Respondent**

**With****M.A.109 OF 2019 in O.A.200 OF 2019**

Shri Sharad Gangaram Kalel, )

Occ. Retired, )  
R/at 681/6(B), Janaseva Society, )  
Bibwewadi, Pune-411037. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Pune City, Pune 411001. )...**Respondent**

**With**

**M.A.110 OF 2019 in O.A.201 OF 2019**

Shri Ashok Dattu Jagtap, )  
Occ. Retired, )  
R/at Survey no. 16/23, Ganesh Colony )  
Hadapsar, Pune-411028. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Pune City, Pune 411001. )...**Respondent**

**With**

**M.A.111 OF 2019 in O.A.202 OF 2019**

Shri Dattatraya Genuji Gawali, )  
Occ. Retired, )  
R/at Hind Colony, Lane No.3, Bhekrai )  
Nagar, Octroi Naka, Phursungi, Pune. )...**Applicant**

**Versus**

The Addl. Director General of Police, )  
C.I.D. (crime), Maharashtra State, )  
Chavan nagar, Pashan, Pune 411008. )...**Respondent**

**With**

**M.A.214 OF 2019 in O.A.403 OF 2019**

Shri Sitaram Dada Metkari, )  
 Occ. Retired, )  
 R/at At Flat No.5, Shree Chintamani Apt. )  
 Vardayini Soc. Plot No.124, Sus Road, )  
 Pashan, Pune - 411 021. )...**Applicant**

**Versus**

The Commissioner of Police, )  
 Near G.P.O. Sadhu Vaswani Rd. )  
 Pune City, Pune - 411001. )...**Respondent**

**With**

**M.A. 215 OF 2019 in O.A.404 OF 2019**

Shri Rama Babu Lonkar, )  
 Occ. Retired, )  
 R/at At S No.35, Pragati Nagar, Galli )  
 No.4, Hadapsar, Pune – 411 028. )...**Applicant**

**Versus**

1. The Commissioner of Police, )  
 Near G.P.O., Sadhu Vaswani Rd. )  
 Pune-411016. )  
 1. The Accountant General (I) )  
 Maharashtra, 101 Maharshi Karve )  
 Road, Mumbai : 400 021. )...**Respondents**

**With**

**M.A.237 OF 2019 in O.A.434 OF 2019**

Shri Nandakumar S. Yande, )  
 Occ. Retired, )  
 R/at Asim Park Society, Plot No.9A, )  
 Survey No.673-Part 1, Bibvewadi, )  
 Pune - 411037. )...**Applicant**

**Versus**

1. The Secretary, Home Dept., )  
 Mantralaya, Mumbai 400 032. )
2. The Commissioner of Police, Pune )  
 City, Pune 411 001. )...**Respondents**

**With****M.A.238 OF 2019 in O.A.435 OF 2019**

Shri Dattatraya Vitthal Kale, )  
 Occ. Retired, )  
 R/at S. No.19/1 A, Gondhalenagar, )  
 Front of Ekvishwa Complex, Hadapsar, )  
 Pune – 411 028. )...**Applicant**

**Versus**

1. The Secretary, Home Dept., )  
 Mantralaya, Mumbai 400 032. )
2. The Commissioner of Police, Pune )  
 City, Pune 411 001. )...**Respondents**

**With**

**M.A.264 OF 2019 in O.A.450 OF 2019**

Shri Kanhaiya V.Mahamuni, )  
Occ. Retired, )  
R/at Matrupitru Chhaya, S.No.60, Sai )  
Nagar, Galli No.4, Kondhwa Bk., )  
Pune 411048. )...**Applicant**

**Versus**

The Commissioner of Police, )  
Near G.P.O. Sadhu Vaswani Rd. )  
Pune City, Pune - 411001. )...**Respondent**

**Mr. V.V. Joshi, Advocate for Applicants.**

**Ms. N.G. Gohad, Mrs. A.B. Kololgi, Shri A.J. Chougule & Mrs. K.S. Gaikwad, Presenting Officers for Respondents.**

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

**DATE : 26.02.2020**

**JUDGMENT**

1. All these Misc. Applications are filed for condonation of delay caused in filing O.A. for declaration that the recovery made for alleged excess payment be declared illegal and further sought direction for refund of amount with interest.

2. The Applicants are retired Police Personnel and have filed O.As for declaration that the recovery made for alleged excess payment be declared illegal and also seek direction for refund of amount with interest. As all these O.As are filed beyond the period of limitation, the Applicants have filed M.As for condonation of delay. The Applicants



stand retired long back. The amount is recovered from them in some cases after retirement and in other cases, even before retirement from their salary. It needs to make it clear that these O.As are filed basically in view of the decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))** wherein recovery from retired employees is held impermissible. This aspect will be dealt with a little later. Presently, suffice to say that the very foundation filing of O.A. is the decision of Hon'ble Apex Court in **Rafiq Masih's** case, though in majority of O.As, the amount is recovered much before the decision of Hon'ble Supreme Court in **Rafiq Masih's** case. The Applicants have counted limitation from the date of retirement though in majority of O.As, the amount has been recovered much before retirement i.e. from salary. Furthermore, the period of limitation shown counted from the date of retirement is also incorrect. During the course of hearing, the learned P.Os. have pointed out this aspect that the delay shown by the Applicant is totally incorrect. I find substance in their submission.

3. The following Chart would show the details of date of retirement, date of recovery as well as period of delay shown by the Applicants and as per the Respondents.

Sr.No.	Case No.	Date of Retirement	Amt. Recovered	Date of Recovery	Delay shown by Applicant	Exact delay from date of recovery
1.	M.A.51/19 in O.A.112/19	31.05.16	1,05,385/-	22.07.16	1 Year 1 Month	1 Year 7 Months
2.	M.A.60/19 in O.A.125/19	31.12.15	82,975/-	11.03.16	1 Year 5 Months	1 Year 11 Months
3.	M.A.61/19 in O.A.126/19	31.08.15	1,00,795/-	21.04.16	2 Years	1 Year 10 Months
4.	M.A.79/19 in O.A.151/19	29.02.16	1,80,000/-	07.05.16	1 Year 10 Months	1 Year 9 Months
5.	M.A.80/19 in O.A.152/19	31.05.15	1,03,887/-	06.07.15	2 Years 7 Months	2 Years 7Months

6.	M.A.81/19 in O.A.153/19	31.05.12	2,22,080/-	11.12.13	3 Years 8 Months	4 Years 2 Months
7.	M.A.108/19 in O.A.199/19	30.06.15	1,45,499/-	19.08.15	2 Years 7 Months	2 Years 7 Months
8.	M.A.109/19 in O.A.200/19	30.11.11	95,951/-	23.12.11	6 Years 3 Months	6 Years 3 Months
9.	M.A.110/19 in O.A.201/19	31.05.14	40,315/-	Feb. 13 to Nov. 13	3 Years 9 Months 10 days	4 Years 3 Months
10.	M.A.111/19 in O.A.202/19	31.05.13	32,402/-	24.05.13	4 Years 9 Months 15 days	4 Years 10 Months
11.	M.A.99/19 in O.A.178/19	30.06.15	92,967/-	20.02.16	2 Years	2 Years
12.	M.A.214/19 in O.A.403/19	30.06.14	59,901/-	recovered from salary of Nov. 2010 to Apr. 2013	3 Years 4 Months	5 Years
13.	M.A.215/19 in O.A.404/19	28.02.14	51,188/-	recovered from salary of Nov. 2010 to Dec. 2012	5 Years	5 Years 4 Months
14.	M.A.237/19 in O.A.434/19	31.03.13	88,493/-	15.05.2013	4 Years 11 Months	4 Years 11 Months
15.	M.A.238/19 in O.A.435/19	31.05.15	51,388/-	20.06.2015	2 Years 10 Months	2 Years 10 Months
16.	M.A.264/19 in O.A.450/19	31.03.13	50,409/-	21.06.2013	4 Years 6 Months	4 Years 11 Months

4. Shri V.V. Joshi, learned Advocate for the Applicants submits that in view of settled legal position that the application for condonation of delay has to be considered liberally, the Applicants being retired Police Personnel, the delay caused in filing O.A. deserves to be condoned. He submits that because of illness, the Applicants could not file O.As within time. He further submits that the Medical Certificates filed need to be considered sympathetically so that the Applicants could get benefit of decision of Hon'ble Supreme Court in **Rafiq Masih's** case. On the point of limitation, he sought to place reliance on the decision of Central

Administrative Tribunal reported in **2010(2) (CAT) Om Parkash Kapoor Vs. Union of India & Ors.** which matter indeed pertains to fixation of pay, and therefore, in view of dispute of fixation of pay, the CAT held that it has recurring cause of action, and therefore, the law of limitation not attract. Whereas, in the present case, there is no such dispute of fixation of pay. Therefore, this authority in the present situation is hardly of any assistance to him.

5. Per contra, learned Presenting Officer submits that in majority of O.As, the amount is recovered much before retirement even before the decision of Hon'ble Supreme Court in **Rafiq Masih's** case, and therefore, the Applicants are not entitled to the relief claimed in O.A. On the point of limitation, the learned P.O. submits that the Medical Certificates produced by the Applicants are just secured for name sake and indeed, there is no such serious illness which would have prevented the Applicants from filing O.A. within the period of limitation. The learned P.O. therefore submits that the Medical Certificates are not at all reliable much less so as to condone the delay of years together.

6. True, while considering the application for condonation of delay, the Court/Tribunal should approach justice oriented approach and hyper-technical approach should be avoided. Normally, if the delay is reasonably explained, it should be allowed so as to decide the claim on merit. However, at the same time, it must be seen whether the ground/explanation put forth for delay is genuine and inspires some confidence. It is the acceptability of explanation that matters and not the length of delay. Suffice to say, acceptability of cause for delay is material factor.

7. Now let us see the ground of delay case to case.

(i) In M.A.51/2019, the Applicant has produced Medical Certificate (Page No.4) which goes to show that the Applicant was indoor patient for shoulder and cervical pain from 28.09.2017 to

05.10.2017. This is the only Certificate produced to condone the delay. In this matter, excess payment made to the Applicant was recovered on 22.07.2016. He retired on 31.05.2016, whereas, O.A. is filed on 05.02.2019. As such, the O.A. ought to have been filed within one year from the date of recovery or before 22.07.2017, whereas it is filed on 05.02.2019. Thus, the delay comes to 1 year and 7 months and not 1 year and 1 month shown in the application. Whereas, the Medical Certificate pertains to the period of 28.09.2017 to 05.10.2017 only. There is no explanation for not filing O.A. after 05.10.2017 within reasonable time. Therefore, it cannot be said that there was any such medical reason for not filing O.A. within the period of limitation.

(ii) In M.A.60/2019, the amount was recovered on 11.03.2016 whereas, the Applicant stands retired on 31.12.2015. The Applicant has produced Medical Certificate dated 07.02.2019 (Page No.13 of P.B.) which simply shows that the Applicant was taking treatment from Bapat Hospital for Arthritis. This Medical Certificate of treatment of Arthritis cannot be construed to mean that the Applicant was really suffering from any serious illness which prevented him from filing O.A. within the period of limitation. As the amount was recovered on 11.03.2016, the O.A. ought to have been filed on 11.03.2017. However, the O.A. is filed on 12.02.2019. Thus, it is delayed by 1 year and 11 months and not by 1 year and 5 months as shown by the Applicant. The Medical Certificate of treatment of Arthritis, which is common in old age cannot be construed to say that the Applicant was bed-ridden or unable to move so as to file O.A. within the period of limitation.

(iii) In M.A.61/2019, the Applicant has filed Medical Certificate dated 29.01.2019 (Page No.3 of P.B.) which simply shows that the Applicant is suffering from Hyper-tension, which is also common

and cannot be termed as serious ailment, so as to prevent the person from doing day to day work. In this case, the amount was recovered from 21.04.2016, and therefore, O.A. ought to have been filed on or before 21.04.2017. Thus, the delay comes to 1 year and 10 months. The general Medical Certificate of Hypertension cannot be accepted to contend that the Applicant was prevented from doing day to day work because of Hypertension.

(iv) In M.A.79/2019, the Applicant has produced the Medical Certificate (Page No.13 of P.B.) to show that he was suffering from Hypertension and was advised rest from 01.12.2018 to 16.01.2019. There is absolutely no explanation of any inability or medical illness prior to 01.12.2018. In this matter, the amount was recovered on 07.05.2016. As such, the O.A. ought to have been filed on or before 07.05.2017 whereas, it is filed on 20.02.2019. Thus, the delay comes to 1 year and 9 months. The Medical Certificate pertains to treatment of Hypertension for the period from 01.12.2018 to 16.01.2019. There is absolutely no explanation for the period from 07.05.2017 to 01.12.2018, and therefore, this Medical Certificate can hardly be accepted to say that the Applicant was really prevented by insufficient cause for filing O.A. within the period of limitation.

(v) In M.A.80/2019, the Applicant has produced Medical Certificate dated 08.02.2019 (Page No.13 of P.B.) to show that he was suffering from Arthritis. Except this general Certificate of Arthritis, no other documentary evidence of illness is forthcoming. In this matter, the Applicant stands retired on 31.05.2015 and the amount was recovered on 07.07.2015. As such, the O.A. ought to have been filed on or before 06.07.2016 whereas the O.A. was filed on 20.02.2019. Thus, the delay comes to 2 years and 7 months. Suffice to say, the ailment of Arthritis shown in Medical Certificate cannot be construed to mean that the Applicant was unable to

move or to do day to day work, so as to condone the delay of 2 years and 7 months.

(vi) In M.A.81/2019, the Applicant stands retired on 31.05.2012 and the amount was recovered from him on 11.12.2013. As such, the O.A. ought to have been filed within one year of limitation i.e. on or before 11.12.2014, whereas it is filed on 20.02.2019. Thus, the delay comes to 4 years and 2 months and not 3 years and 8 months, as shown by the Applicant. In this matter, the Applicant has filed Medical Certificate dated 29.01.2019 (Page No.13 of P.B.) which simply shows that the Applicant was taking treatment for his spinal cord injury as outdoor patient. This Medical Certificate can hardly be accepted to say that the Applicant was suffering from any such serious ailment to condone such huge delay of 4 years and 2 months. Therefore, no weightage can be given to such Medical Certificate, which is apparently secured only to seek condonation of delay.

(vii) In M.A.108/2019, the Applicant stands retired on 30.06.2015 and the amount was recovered from him on 19.08.2015. As such, the O.A. ought to have been filed on or before 19.08.2016, whereas it is filed on 05.03.2019. Thus, the delay comes to 2 years and 7 months. In this matter, the Applicant has produced Medical Certificate dated 04.02.2019 (Page No.4 of P.B.) which purportedly shows that the Applicant was under treatment for Asthma since June, 2016. This Medical Certificate showing the ailment of Asthma can hardly be accepted to condone such huge delay of 2 years and 7 months. Persons suffering from Asthma cannot be said totally prevented from doing day to day work and to file O.A. within the period of limitation.

(viii) In M.A.109/2019, the Applicant stands retired on 30.11.2011 and he himself deposited the excess amount with the

Department on 23.12.2011. Thus, the O.A. ought to have been filed on or before 23.12.2012, whereas it is filed on 05.03.2019. Thus, the delay comes to 6 years and 3 months. In this matter, the Applicant has tendered Medical Certificate dated 08.02.2019 (Page No.6 of P.B.) which simply shows that the Applicant was under treatment for spondylitis for 7 years. Except this Medical Certificate, no other medical record is produced to substantiate the nature of treatment and seriousness of ailment. Such Medical Certificate can hardly be accepted to condone such huge delay of 6 years and 3 months.

(ix) In M.A.110/2019, the Applicant stands retired on 31.05.2014 and the amount was already recovered from his salary from February, 2013 to November, 2013. As such, the O.A. ought to have been filed on or before November, 2014. However, it is filed on 05.03.2019. Thus, the delay comes to 4 years and 3 months and not 3 years and 9 months, as shown by the Applicant. In this matter, the Applicant has produced Medical Certificate dated 19.02.2019 (Page No.4 of P.B.) purportedly showing that the Applicant was under treatment of Dr. Bora for various illness. Pertinent to note that, this Medical Certificate does not specify the nature of ailment or its seriousness, if any. It is vague stating that the Applicant was under treatment for various illness. Such Certificate in absence of any other medical evidence can hardly be accepted to condone such huge delay of 4 years and 3 months.

(x) In M.A.111/2019, the Applicant stands retired on 31.05.2013 and he himself deposited the excess amount with the Department on 24.05.2013. Thus, the O.A. ought to have been filed on or before 24.05.2014, whereas it is filed on 05.03.2019. Thus, the delay comes to 4 years and 10 months. In so far as Medical Certificate is concerned, the Applicant has produced Medical Certificate dated 29.01.2019 (Page No.4 of P.B.) wherein he

is shown under treatment for hypertension. Except this Medical Certificate, no other record is produced to substantiate that he was really suffering from any such serious illness and was unable to do day to day work. Such Medical Certificate can hardly be accepted to condone such huge delay of 4 years and 10 months.

(xi) In M.A.99/2019, the Applicant stands retired on 30.06.2015 and the amount was recovered from him on 20.02.2016. As such, the O.A. ought to have been filed on or before 20.02.2017, whereas it is filed on 26.02.2019. Thus, the delay comes to 2 years. In this matter, no Medical Certificate is produced. In application, all that the Applicant stated that it is a case of continuous cause of action. In my considered opinion, this cannot be considered as continuous cause of action as cause of action accrued on 20.02.2016 and limitation starts from that date. It is not at all the case of continuous cause of action.

(xii) In M.A.214/2019, the Applicant stands retired on 30.06.2014 and the excess amount was recovered from the salary of November, 2010 to April, 2013. This being the position, the O.A. ought to have been filed on or before April, 2014, whereas it is filed on 16.04.2019. Thus, the delay comes to 5 years and not 3 years and 4 months, as shown by the Applicant. In so far as the ground for condonation of delay is concerned, the Applicant has produced Medical Certificate dated 18.12.2019 (Page Nos.5 to 7 of P.B.) which purportedly shows that his daughter was under treatment for heart ailment. Beside this Medical Certificate, the Applicant has also produced one more Medical Certificate dated 18.03.2019 which purportedly shows that he and his wife were taking treatment for allergic skin disorder. Except this Medical Certificate, no other record is produced to show seriousness of the ailment and the treatment for the same. Such Medical Certificate can hardly be accepted to condone such huge delay of 5 years.



(xiii) In M.A.215/2019, the Applicant stands retired on 28.02.2014 whereas the amount was recovered from the salary of November, 2010 to December, 2012. As such, the O.A. ought to have been filed on or before 31<sup>st</sup> December, 2013 whereas it is filed on 16.04.2019. Thus, the delay comes to 5 years and 4 months. In this matter, the Applicant has produced Medical Certificate dated 25.02.2019 (Page Nos.5 to 9 of P.B.) to show that his wife was under treatment for Spondylitis since 2014. Here again, such Medical Certificate cannot be accepted to condone such huge delay of 5 years and 4 months, as the Applicant was there to take appropriate legal remedy within the period of limitation.

(xiv) In M.A.237/2019, the Applicant stands retired on 31.03.2013 and the amount was recovered from his gratuity on 15.05.2013. As such, the O.A. ought to have been filed on or before 15.05.2014. However, it is filed on 26.04.2019. Thus, the delay comes to 4 years and 11 months. In so far as the ground of delay is concerned, the Applicant has produced Medical Certificate dated 12.04.2019 (Page Nos. 4 & 5 of P.B.) to show that he was taking treatment for hypertension and his wife had undergone operation for knee joint pain. She was indoor patient from 27.03.2018 to 03.04.2018. This Medical Certificate can hardly be accepted to condone the huge delay of 4 years and 11 months.

(xv) In M.A.238/2019, the Applicant stands retired on 31.05.2015 and the amount was recovered from his gratuity on 20.06.2015. As such, the O.A. ought to have been filed on or before 20.06.2016. However, it is filed on 26.04.2019. Thus, the delay comes to 2 years and 10 months. In so far as the ground of delay is concerned, the Applicant has produced Medical Certificate dated 12.04.2019 (Page No. 4 of P.B.) to show that he was taking treatment for BEP. Varicella + Hydrocele. Here again, this Medical

Certificate can hardly be accepted to condone the huge delay of 2 years and 10 months.

(xvi) In M.A.264/2019, the Applicant stands retired on 31.03.2013 and the amount was recovered on 21.06.2013. As such, the O.A. ought to have been filed on or before 15.06.2014. However, it is filed on 03.05.2019. Thus, the delay comes to 4 years and 11 months. In so far as the ground of delay is concerned, the Applicant has produced Medical Certificate dated 12.11.2018 (Page No. 9 of P.B.) to show that he was operated for leg injury and was indoor patient from 03.11.2018 to 12.11.2018. There is no medial ailment of earlier period. As such, this Medical Certificate which can hardly be accepted to condone the huge delay of 4 years and 11 months.

8. Thus, in all these M.As, the alleged illness has been put forth as a ground to condone the delay. Interesting to note that except in M.A.51/2019, in all other M.As, the date of issuance of Medical Certificate is just before few days of filing of O.As. It is only in M.A.51/2019, the Discharge Card is produced to show the period of Hospitalization from 28.09.2017 to 05.10.2017. Whereas in remaining M.As, the Medical Certificates were secured just before filing of the proceedings. The nature of Medical Certificate of the ailment is already discussed above. These Medical Certificates issued belatedly without any other contemporary record in the nature of prescription of medicine taken in the relevant period of illness cannot be accepted. Indeed, it is not clear on what basis these belated Medical Certificates were issued by Doctor. It is thus explicit that these Medical Certificates were issued only on the demand of Applicants. This being the position, no reliance can be placed on the Medical Certificates. Even assuming for a moment that the Applicants were suffering from such ailment as mentioned in the Medical Certificates viz. Arthritis, Spondylitis, etc., it can hardly be termed as serious illness to prevent a person from doing day to day work.

I, therefore, no hesitation to sum-up that all these Medical Certificates will have to be discarded, as it does not inspire any confidence. On the contrary, *ex-facie*, those are secured only to create ground of illness.

9. It would not be out of place here to mention that all these O.As along with M.As are filed to take the benefit of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, wherein recovery from retiral benefits in certain situation is held impermissible. Material to note that Hon'ble Supreme Court decided **Rafiq Masih's** case on 08.12.2014. Significant to note that out of these 16 proceedings, in O.As. at Serial Nos.6, 8, 9, 10, 12, 13, 14 and 16, as shown in Chart in Para No.3 of this order, the amount was recovered much before the decision of Hon'ble High Court in **Rafiq Masih's** case. This being the position, the amount already recovered much before the decision in **Rafiq Masih's** case cannot be claimed back by filing belated proceedings. Needless to mention that where the issue has already attained finality, then such issue cannot be re-opened with retrospective effect because of subsequent judicial proceedings. As such, viewed from this angle also, the claim of recovery in Serial Nos. 6, 8, 9, 10, 12, 13, 14 and 16, as shown in Chart in Para No.3 of this order would not be maintainable in law.

10. Apart, the O.A. being filed belatedly after extra-ordinary and unexplained delay, in view of rejection of applications for condonation of delay liable to be dismissed being barred by law of limitation.

11. The cumulative effect of aforesaid discussion leads me to sum-up that there is extra-ordinary, huge and unexplained delay to file O.As. The ground of illness raised in application falls flat, as discussed above. All these M.As, therefore, stands dismissed. Hence, the following order.

**ORDER**

- (A) All these M.As for condonation of delay stand dismissed with no order as to costs.
- (B) Resultantly, all these O.As stand dismissed on the point of limitation with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 26.02.2020

Dictation taken by :

S.K. Wamanse.

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