

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO.601 OF 2018  
IN  
ORIGINAL APPLICATION NO.1019 OF 2018**

Shri Arun V. Joshi. )...Applicant

**Versus**

1. The State of Maharashtra. )...Respondent

**Mr. J.N. Kamble, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 04.05.2019**

**ORDER**

1. This is an application for condonation of delay of ten years caused in filing O.A. 1019/2018 wherein the Applicant has prayed for refund of Rs.1,49,130/- recovered from him in 2008. The Applicant stands retired on 28<sup>th</sup> February, 2006. After his retirement, as per objection of Pay Verification Unit, the excess payment made to him due to wrong fixation of allowances amounting to Rs.1,49,130/- was recovered from his gratuity in July, 2008. Now, after ten years, the Applicant has filed the present O.A.1019/2018 for refund of the said amount and his claim is seems purely based on the Judgment of Hon'ble Supreme Court in **AIR 2015 SC 696 (State of Punjab and others Vs. Rafiq Masih (White Washer))**. The Applicant contends that he was making correspondence with the Respondent, and therefore, delay has been caused to file O.A.

2. The Respondent resisted the application inter-alia denying the Applicant's entitlement to the refund of amount of Rs.1,49,130/- deducted from his gratuity.

The Respondent contends that no sufficient cause much less reasonable or acceptable has been made out to condone huge and inordinate delay of ten years in filing O.A. and prayed to dismiss the application. The Respondent further contends that, at the time of retirement, the notice was given to the Applicant for deduction of Rs.1,49,130/- from his gratuity and it is only on his written consent dated 28.06.2006, the said amount has been deducted from his gratuity. Therefore, now the Applicant cannot raise any grievance about his deduction after lapse of ten years.

3. All that Shri J.N. Kamble, learned Advocate for the Applicant submitted that the Applicant was making representation from time to time, and therefore, the delay caused in filing O.A. being not intentional be condoned. Whereas the learned P.O. reiterated the contentions raised in his reply and submitted that the amount has been deducted on the consent of Applicant, and therefore, now he is estopped from raising grievance, that too, after ten years from the date of recovery.

4. True, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally, the delays may be condoned where no gross negligence or deliberate inaction or lack of *bonafide* is imputable to the party seeking condonation of delay. Suffice to say, the Courts/Tribunal should adopt justice oriented approach rather than hyper-technical and if explanation offered for the delay is acceptable, then it has to be condoned, so as to decide the matter on merit and mere length of delay is no material. It is also equally true that the Rules of Limitations are not meant to destroy rights of parties, but they are made to see that the parties do not resort to do dilatory tactics, but seek their remedy promptly.

5. Now, turning to the facts of the present case, admittedly, the amount has been deducted from the gratuity of the Applicant in 2008, that too, on his written

consent. The Respondent has also produced the copy of letter of the Applicant dated 28.08.2006 whereby he consented for the deduction of the excess payment paid to him. This being the position, now he is estopped from questioning the action of Respondent. Secondly, there is absolutely no explanation much less satisfactory for the delay of ten years in filing the O.A. Needless to mention that mere filing of representations or applications would not extend the period of limitation, particularly huge and inordinate delay of ten years. This rather shows negligence and inaction on the part of Applicant. As the amount has been deducted in 2008 that too on written consent of the Applicant, he cannot seek the benefit of the Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra) with retrospective operation. I see, therefore, no reason to exercise discretion in favour of the Applicant so as to condone huge and inordinate delay of ten years, which is in fact not at all explained and secondly, the Applicant is estopped from questioning the recovery in view of his written consent.

6. For the aforesaid reason, I have no hesitation to sum-up that no case is made out to condone the delay of ten years and application is liable to be dismissed.

7. Resultantly, the M.A.No.601/2018 is dismissed and accordingly, the O.A.1019/2018 being barred by limitation is disposed of.

Sd/-

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

Mumbai

Date : 04.05.2019

Dictation taken by :

S.K. Wamanse.