

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**M.A.No.434 OF 2018 IN O.A.ST. NO.1676 OF 2018  
WITH  
M.A.No.435 OF 2018 IN O.A.ST. NO.1678 OF 2018  
WITH  
M.A.No.436 OF 2018 IN O.A.ST. NO.1680 OF 2018  
WITH  
M.A.No.437 OF 2018 IN O.A.ST. NO.1682 OF 2018**

**(Subject :- M.As. For Condonation of Delay)**

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**M.A.No.434 OF 2018 IN O.A.ST. NO.1676 OF 2018**

**DISTRICT : AURANGABAD**

**Smt. Nargis Tajammun Shaikh,** )  
Age: 62 Years, Occ- Pensioner, )  
R/o:- Plot No.5, Pragati Colony, )  
Ghati Aurangabad. )  
Tq. & Dist. Aurangabad. ) **...Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary )  
School Education Department, )  
Mantralaya, Mumbai-32. )
2. **The Divisional Deputy Director,** )  
Of Education, Aurangabad Division, )  
Auragabad. )
3. **The Education Officer (C.E.)** )  
Zilla Parishad, Aurangabad. )  
Tq. & Dist. Aurangabad. )

4. **The Account Officer,** )  
Pay Verification (Squad), )  
Aurangabad. )  
Tq. & Dist. Aurangabad. ) **...Respondents**

**WITH**

**M.A.No.434 OF 2018 IN O.A.ST. NO.1676 OF 2018**

**DISTRICT : AURANGABAD**

- Smt. Syeda Nasreen Nayeem,** )  
Age: 63 Years, Occ- Pensioner, )  
R/o:- Plot No.24, Gut No.201, )  
Savera Park, Near Ibrahim Mazid, )  
Jatwada Road, Aurangabad )  
Tq. & Dist. Aurangabad. ) **...Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary )  
School Education Department, )  
Mantralaya, Mumbai-32. )
2. **The Divisional Deputy Director,** )  
Of Education, Aurangabad Division, )  
Aurangabad. )
3. **The Director of State Institute of** )  
English for Maharashtra, )  
Aurangabad, Dist. Aurangabad. )
4. **The Account Officer,** )  
Pay Verification (Squad), )  
Aurangabad. )  
Tq. & Dist. Aurangabad. ) **...Respondents**

**WITH**

**M.A.No.436 OF 2018 IN O.A.ST. NO.1680 OF 2018**

**DISTRICT : AURANGABAD**

**Smt. Siddiqui Laiqua Anees,** )  
Age: 63 Years, Occ- Pensioner, )  
R/o:- Maulana Azad Housing Society, )  
Plot No.26, CIDCO, N-13, Himayatbag, )  
Aurangabad, Tq. & Dist. Aurangabad. ) **...Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary )  
School Education Department, )  
Mantralaya, Mumbai-32. )
2. **The Divisional Deputy Director,** )  
Of Education, Aurangabad Division, )  
Aurangabad. )
3. **The Director of State Institute of** )  
English for Maharashtra, )  
Aurangabad, Dist. Aurangabad. )
4. **The Account Officer,** )  
Pay Verification (Squad), )  
Aurangabad. )  
Tq. & Dist. Aurangabad. ) **...Respondents**

**WITH**  
**M.A.No.437 OF 2018 IN O.A.ST. NO.1682 OF 2018**

**DISTRICT : PARBHANI**

**Sk. Abdul Rab s/o Mohd Abdul Karim,** )  
Age: 64 Years, Occ- Pensioner, )  
R/o:- Kazi Bag, Behind Memon Building, )  
Darga Road, Parbhani, )  
Tq. & Dist. Parbhani. ) **...Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary )  
School Education Department, )  
Mantralaya, Mumbai-32. )
  2. **The Divisional Deputy Director,** )  
Of Education, Aurangabad Division, )  
Aurangabad. )
  3. **The Principal,** )  
Government Vidya Niketan, )  
Aurangabad, District Aurangabad. )
  4. **The Account Officer,** )  
Pay Verification (Squad), )  
Aurangabad. )  
Tq. & Dist. Aurangabad. ) **...Respondents**
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**Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the Applicants in all these O.As**

**Shri V.R. Bhumkar, Shri N.U. Yadav, Smt. Sanjivani K. Deshmukh-Ghate and Smt. M.S. Patni, learned Presenting Officers for the Respondents in respective O.As.**

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**CORAM** : **B.P. Patil, Member (J).**

**RESERVED ON** : **12.04.2019.**

**PRONOUNCED ON** : **26.04.2019.**  
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**ORDER**

1. The Applicants have filed the present Misc. Applications for condonation of delay caused for filing the Original Applications.

2. I am deciding the Misc. Applications by common order as the facts and issues involved in all the matters are similar and identical.

3. The Applicant, Smt. Nargis Tajammun Shaikh in M.A.No.434 of 2018 in O.A.St.No.1676/2018 has been retired from the office of the Respondent No.3 w.e.f. 31.3.2015. It is her contention that an amount of Rs.75,704/- (Rs. Seventy Five Thousand Seven Hundred Four Only) had been recovered from her pensionary benefits on account of wrong pay fixation while

awarding senior grade as per the Chhatopadhya Committee and while awarding time bound pay scale as per the G.R. dated 06.08.1995. It is her contention that there was no misrepresentation or fraud practiced on her part in getting the pay scale or pay fixation. The Respondent Nos.1 & 2 were responsible for awarding wrong pay scale and for making excess payment to her.

4. The Applicant, Smt. Syeda Nasreen Nayeem in M.A.No.435/2018 in O.A.St.No.1678 has been retired from the post of Lecturer w.e.f. 31.7.2014. It is her contention that an amount of Rs.98,804/- (Rs. Ninty Eight Thousand Eight Hundred Four Only) had been recovered from her pensionary benefits. It is her contention that pay in senior grade as per the Chhatopadhya Committee has been fixed wrongly by the Respondent No.2. Not only this but the time bound pay scale has also been wrongly granted to her as per the G.R. dated 06.08.1995. Therefore, excess payment has been made to her. It is her contention that there was no misrepresentation or fraud practiced on her part in getting wrong pay scale and in receiving excess amount. The Respondents Nos.1 and 2 were responsible for the said thing. It is her contention that the excess payment

made to her had been recovered from her pensionary benefit after his retirement from the Respondent Nos.2 & 3.

5. The Applicant, Smt. Siddiqui Laiqua Anees in M.A.No.436/2018 in O.A.St.No.1680/2018 has been retired from the post of Lecturer on 31.12.2014. It is her contention that due to the mistake committed by the Respondent No.2, she was awarded senior grade as per the Chhatopadhya Committee and time bound pay scale in view of the G.R. dated 06.08.1995. Therefore, excess payment was made to her. The Respondent Nos.2 & 3 had recovered the amount of Rs.2,84,417/- (Rs. Two Lac Eighty Four Thousand Four Hundred Seventeen only) from her pensionary benefits on account of excess payment made to her.

6. The Applicant Shri Sk. Abdul Rab s/o Mohd Abdul Karim in M.A.No.437/2018 in O.A.St.No.1682/2018 has been retired from the post of Warden Government Vidya Niketan on 31.01.2012. It is his contention that the Respondent No.2 has granted him senior grade as per the Chhatopadhya Committee and time bound pay scale in view of the G.R. dated 06.08.1995. Thereafter on the basis of said pay scale, the excess payment was

made to him. The Respondent No.2 and 3 thereafter noticed the irregularities and therefore, after his retirement an amount of Rs.64,086/- (Rs. Sixty Thousand Eighty Six only) had been recovered from his pensionary benefits.

7. It is contention of all the Applicants that after retirement they learned about the decision of Hon'ble Apex Court in case of ***State of Punjab Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014*** and the judgment passed by this Tribunal **on 02.09.2016 in O.A.Nos.23, 24, 25, 26, 73, 116, 128, 156 of 2016** and in **O.A.No.802/2016 on 07.11.2017** and in **O.A.No.884/2016 on 16.03.2018**. It is further contentions of all the Applicants that their cases are also covered by the above said decision.

8. It is their contention that they were suffering from old age problems and deceases and therefore, they could not able to approach this Tribunal in time. Therefore, delay for filing Original Application has been caused. It is their contentions that the delay caused in filing the Original Applications is not intentional and deliberate. It is their contention that their valuable rights are involved in the present Original Applications



and therefore, they prayed to condone the delay by allowing the Misc. Applications.

9. Respondent Nos.1 and 2 have filed their affidavit-in-reply and resisted the contentions of the Applicants. It is their contention that the amount of the excess payment made to the Applicants has been recovered from the Applicants long back. The Applicants had not made any representation claiming refund of the amount and without availing alternate remedy, they approached this Tribunal. Therefore, the Original Applications are not maintainable. It is their contention that the Applicants want to take benefit of the order passed by this Tribunal in similar matters. But the decisions in those cases are not applicable in the instant cases. It is their contention that the Applicants have not explained the inordinate delay caused for filing the Original Applications and in the absence of the satisfactory and convincing reasons, the Misc. Applications can not be allowed. It is their contention that the Applicants have not explained each and every days delay caused for filing the Original Applications. It is their contention that it is settled legal principle that if some persons has taken a relief approaching the court just or immediately after cause of action arisen, other

persons cannot take the benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus passed at the behest of the some diligent persons. It is their contention that the Applicants have slept over their right for long. Therefore, they cannot take benefits of the decision rendered by this Tribunal in above said O.As. The Applicants have not explained the delay satisfactorily and therefore, they prayed to reject the Misc. Applications.

10. I have heard Shri P.B. Salunke, learned Advocate holding for Shri V.G. Salgare, learned Advocate for the Applicants in all these O.As. and Shri V.R. Bhumkar, Shri N.U. Yadav, Smt. Sanjivani K. Deshmukh-Ghate and Smt. M.S. Patni, learned Presenting Officers for the Respondents in respective O.As.

11. Learned Advocate for the Applicant has submitted that the wrong pay scale in the senior grade has been granted to the Applicants as per the Chhatopadhya Committee by the Respondent Nos.2. Not only this but thereafter time bound pay scale was granted to them as per the G.R. dated 06.08.1995 by the Respondent Nos.2. No role has been played by the Applicants in getting the said pay scale and benefit of time bound

pay scale. There is mistake on the part of the Respondent Nos.2 in awarding wrong senior grade scale and time bound pay scale to the Applicants. He has submitted that the Respondent Nos.2 & 3 have recovered the amount of excess payment made to the Applicant illegally. The action on the part of the Respondents recovering the amount paid to the Applicants is against the guidelines given by the government in case of ***State of Punjab Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014.*** Therefore, the Applicants approached this Tribunal by filing the present Original Applications. He has submitted that after retirement, the Applicants were suffering from multiple diseases and therefore, they could not able to approach this Tribunal in time. He has submitted that the Applicants learned about the decision rendered by the Hon'ble Apex Court in case of ***State of Punjab Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014*** and the judgment passed by this Tribunal ***on 02.09.2016 in O.A.Nos.23, 24, 25, 26, 73, 116, 128, 156 of 2016*** and in ***O.A.No.802/2016 on 07.11.2017*** and in ***O.A.No.884/2016 on 16.03.2018.*** Therefore, they approached this Tribunal. He has submitted that the delay caused for filing the Original Applications was not

intentional and deliberate. He has argued that the Applicants have explained the delay satisfactorily and therefore, he prayed to allow the Misc. Applications and to condone the delay caused for filing the Original Applications. In support of his submission he placed reliance on the judgment of Hon'ble Apex Court in **Civil Appeal No.10251/2014 in case of Asger Ibrahim Amin Vs. Life Insurance Corporation of India decided on 12.10.2015.**

12. Learned P.O. for the Respondents has submitted that the Applicants retired from the service long back. The recovery has been made before their retirement. The Applicants have not challenged the order directing the recovery on account of excess payment made to them within stipulated time. He has submitted that there is an inordinate delay in filing the Original Application and the delay has not been explained by the Applicants by giving just and satisfactory reasons. He has submitted that the Applicants were not bedridden. The documents produced by the Applicants show that they were taking treatment on OPD basis. The deceases of which the Applicants were suffering were not of serious nature and severe which prevented them to approach this Tribunal. No satisfactory explanation given by all the Applicants and hence, he prayed to reject the Misc. Applications. He has

submitted that the Applicants slept over their right for long period. Therefore, they cannot take benefit of the decision rendered by this Tribunal in case of other persons. In support of his submission he has placed reliance on the judgment of Hon'ble Supreme Court in **Special Leave Petition (Civil) Nos.6609-6613 OF 2014** in case of **Brejesh Kumar & Ors. Vs. State of Haryana & Ors. decided on 24.03.2014.**

13. Learned P.O. for the Respondents has submitted that the Applicants have not explained the delay and therefore, he prayed to reject the Original Applications.

14. I have gone through the documents on record. On perusal of the documents it reveals that the Applicant, Smt. Nargis Tajammun Shaikh in M.A.No.434 of 2018 in O.A.St.No.1676/2018 retired on 31.3.2015. The Applicant, Smt. Syeda Nasreen Nayeem in M.A.No.435/2018 in O.A.St.No.1678 retired from the post of Lecturer w.e.f. 31.7.2014. The Applicant, Smt. Siddiqui Laiqua Anees in M.A.No.436/2018 in O.A.St.No.1680/2018 retired from the post of Lecturer on 31.12.2014. The Applicant Shri Sk. Abdul Rab s/o Mohd Abdul Karim in M.A.No.437/2018 in O.A.St.No.1682/2018 has retired

from the post of Warden Government Vidya Niketan on 31.01.2012. The Applicants received scale in the senior grade pay wrongly due to order passed by the Respondents. Not only this but the they have given time bound pay scale to the Applicants wrongly. The Respondents noticed the said mistake and therefore, the Respondents passed the order and directed recovery from the Applicants. Applicant Smt. Nargis Tajmmun Shaikh in M.A.No.434/2018 in O.A.St.No.1676/2018 was directed to deposit excess amount paid to her by order dated 18.05.2011. Applicant, Smt. Syeda Nasreen Nayeem in M.A.No.435/2018 in O.A.St.No.1678 was directed to deposit the excess amount paid to her by order dated 15.05.2010. The Applicant, Smt. Siddiqui Laiqua Anees in M.A.No.436/2018 in O.A.St.No.1680/2018 was directed to deposit excess amount of pay by order dated 02.08.2011. The Applicant Shri Sk. Abdul Rab s/o Mohd Abdul Karim in M.A.No.437/2018 in O.A.St.No.1682/2018 was directed to deposit the excess amount paid to him by order dated 15.05.2010.

15. In view of the said orders, the excess amount paid to the Applicants on account of wrong pay scale granted to him had been recovered accordingly. It seems that the recovery has been

made in the year 2010 and 2011. The Applicants were in service at that time. They have not challenged the order directing recovery against them within stipulated time by filing the Original Applications. They filed the present Original Applications in the year 2018. It seems that there is delay of more than 7 to 8 years in filing the Original Applications. The said delay is an inordinate delay. The Applicants have not given logical, satisfactory and convincing reason for condoning the delay. They have come with the case that after retirement, they were suffering from deceases due to old age. They have produced the certificates issued by the medical practitioners. On perusal of the said certificates it reveals that the Applicants were suffering from minor deceases and they were treated on OPD basis. None of the Applicants was admitted in the hospital and took treatment as indoor patient. There is nothing on record to show that the because of the ill-health the Applicants were prevented to file Original Applications. Therefore the reason given by the Applicants is not satisfactory and convincing to condone the inordinate delay caused for filing the Original Applications. It is contended by the Applicants that they learned about the decision in case of ***State of Punjab Vs. Rafiq Masih, in Civil Appeal***

**No.11527/2014 decided on 18.12.2014** and about the decision of this Tribunal in other O.As. after retirement and therefore, they approached this Tribunal. It shows that they were not diligent in prosecuting the matter. They slept over their right for years together and only after knowing about the decisions rendered in the other cases, they approached this Tribunal. It shows that the Applicants are not diligent in exercising their right. There was laches and delay on the part of the Applicants. Therefore on that ground also the delay caused for filing the Original Application can not be condoned.

16. I have gone through the decision referred by the learned P.O. for the Respondents in case of **Brejesh Kumar & Ors. Vs. State of Haryana & Ors. decided on 24.03.2014** wherein it has been 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 re-agitating 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."*

17. I have no dispute about the settled legal principle laid down therein. The principle laid down by the Hon'ble Apex Court in above referred case is most appropriately applicable in the present case. In the present cases there is an inordinate delay caused for filing Original Applications. The delay has not been explained by the Applicants by giving satisfactory and sufficient reasons. The Applicants have not properly, satisfactorily and convincingly explained the delay. Therefore, the delay can not be condoned.

18. Considering the abovesaid facts, circumstances and reasons mentioned above, the delay caused for filing Original Applications cannot be condoned. Hence, Misc. Applications deserves to be dismissed.

19. In view of the discussion in forgoing paragraphs, the Misc. Applications stand dismissed. Consequently, the Original Applications also stand rejected with no order as to costs.

**Place:- Aurangabad**  
**Date :- .04.2019**

**(B.P. Patil)**  
**Member (J)**