

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**  
**NAGPUR BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO.654/2014.**

Mahadeo Sampatrao Pakale,  
Aged about 58 years,  
Occ-Retired Sectional Engineer,  
Amravati Irrigation Division, Amravati.  
R/o Abhiyanta Colony, Shankarnagar,  
Amravati.

**Applicant.**

-Versus-

1. State of Maharashtra,  
Through its Secretary,  
Department of Irrigation/ Water Resources,  
Mumbai-400 032.
2. The Superintending Engineer,  
Upper Wardha Project Circle,  
Shivaji Nagar, Amravati.
3. The Executive Engineer,  
Amravati Irrigation Division, Shivaji Nagar,  
Amravati.

**Respondents**

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Shri V.A. Kothale, Advocate for the applicant.  
Shri A.P. Sadavarte, P.O. for the respondent No.1.  
None for respondent Nos. 2 & 3.

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**Coram:** S.S. Hingne, Member (J)

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**Date:-** 12<sup>th</sup> July, 2015.

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**Order**

Heard Shri V.A. Kothale, learned counsel for the  
applicant and Shri A.P. Sadavarte, learned P.O. for the respondent  
No.1. None for respondent Nos. 2 & 3.

*S.S.H.*

2. The applicant has filed the O.A. seeking interest on delayed payment and quash the order of recovery.

3. The applicant, a Sectional Engineer stood voluntarily retired on 30.11.2012. He had submitted an application on 3.8.2012 seeking voluntary retirement. He was informed about the acceptance of his notice of voluntary retirement vide communication dated 27.11.2012.

4. The applicant filed a chart (P.18) showing the delay in payment. He received the amount of leave encashment on 6.2.2013, amount of GPF on 2.4.2013 and the amount of GIS on 13.3.2013. Thus the payment under these heads is received at an earliest.

5. He received the some amount on 17.9.2013, amount of difference in payment on 31.10.2013 and the amount of gratuity on 30.7.2014. The applicant claimed interest on the delayed payment at the rate of 18% with compound interest.

6. Interest is awarded on the delayed payment under Rule 129-B of the M.C.S. (Pension) Rules, 1982, if the payment is delayed beyond three months. In the instant case, the applicant gave notice for voluntary retirement on 3.8.2012 and accordingly he stood voluntarily retired w.e.f. 30.11.2012. Thus, the only three months period was available with the Government to prepare pension case of the applicant. Chapter-X of the M.C.S. Rules deals with the pension.

As per Rule 120 of the Pension Rules, preparation of pension case starts before two years of retirement. This period of two years is divided in three stages as per Rule 121 of the Pension Rules and the work allotted in three stages is to be carried out within a period of that stage. Meaning thereby long period is required to prepare the pension case of a retiring employee which starts before two years earlier to retirement.

7. in the case in hand, the applicant took voluntary retirement and long period of two years was not available with the Government. Despite of this, the payment is made of the terminal benefits which is not longer than a year under some heads. Payments in different heads are released only within 3-4 months after retirement of the applicant. Thus, the Government had three months' period available with it. The applicant is the author of his voluntary retirement. The employee is not entitled for any interest on the delayed payment, if the delay is not attributable to the Government as per Rule 121-A of the Pension Rules. In the case in hand, delay cannot be attributed to the Government. In this view of the matter, the applicant cannot be entitled for interest.

8. Moreover, when the amount of difference is to be paid, it consumes time and on that ground interest cannot be ordered unless pointed out by giving details as to on which date the difference

became payable and when it is actually paid and when the orders about difference are issued and on which date the cause of action to claim the difference ensued. No such details are available so far as difference in pay is concerned which is at Sr.No.3 in the chart.

9. So far as the payment of gratuity is concerned, under Rule 129-A of the Pension Rules, that amount is delayed beyond three months from the date of retirement, then the interest is to be awarded. The applicant is entitled for interest on the amount of gratuity for the delayed period at the prevailing rates of GPF.

10. The second relief which the applicant has sought is to quash the recovery of Rs. 81,691/- which is endorsed in his service book (Annexure A-2, P.12). This recovery is on the ground due to the amount of advance increment paid to the applicant. The learned counsel for the applicant submitted that the amount cannot be recovered. In support of the submission relied on the **State of Punjab and others V/s Rafiq Masih and others (2015) 4 SCC 334**, wherein their Lordships of the Apex Court had summarized the situation wherein recoveries by the employer would be impermissible in law which are as under:

“(i) Recovery from the employees belonging to Class-III and Class-IV service (or Group-C and Group-D service).

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(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. The applicant is a group-B employee, which is clear from a copy of the G.R. of Irrigation Department (dated 16.4.1984 marked 'X'). However, case of the applicant falls in Clause-2 which states that recovery from a retired employee is impermissible. Thus, the said order needs to be quashed. Consequently, the O.A. is disposed of in the following terms:

(i) The entry in the service book (Annexure A-2, P.12) for recovery of Rs. 81,691/- is quashed.

*Sst.*

(ii) The applicant is entitled for interest on the payment of gratuity only for the delayed period at the prevailing rate of GPF of each year.

(iii) The order be complied before 31<sup>st</sup> December 2016.

(iv) No order as to costs.

sd/-

(S.S.Hingne)  
Member (J)

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