

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.710 OF 2017**

**DISTRICT:-Mumbai**

**Rajeshwaree Nikhil Deshpande,** )  
**Occupation: Govt. Service,** )  
**Working as Account Officer,** )  
**Urban Development Dept.,** )  
**Mantralaya, Mumbai-400 032.** )  
**Permanent Residence at** )  
**202/A, Sagar Regency Chs., Dhobi Ghat,** )  
**Near Vakola Bridge,** )  
**Santacruz (East), Mumbai 400 055.** ).... Applicant

**Versus**

- 1. The Secretary,** )  
**State Election Commission,** )  
**1<sup>st</sup> Floor, New Admn. Building,** )  
**Madam Cama Road,** )  
**Mumbai 400 032.** )
- 2. The Addl. Chief Secretary,** )  
**Finance Department,** )  
**5<sup>th</sup> Floor, Main Building,** )  
**Mantralaya, Mumbai 400 032.** )
- 3. The Principal Secretary,** )  
**Urban Development Dept.,** )  
**4<sup>th</sup> Floor, Main Building,** )  
**Mantralaya, Mumbai - 400 032.** ).... Respondents

Shri U.V. Bhosale, learned Advocate for the Applicant appeared for the part of the arguments.

Smt. R.N. Deshpande, the Applicant in person.

Shri K.B. Bhise, the learned Presenting Officer for the Respondent Nos.2 & 3.

Shri I. Shaikh, the learned Advocate for the Respondent No.1.

**CORAM : Shri P.N. Dixit, Member (A)**

**CLOSED ON : 06.07.2018**

**PRONOUNCED ON : 10.07.2018.**

## **J U D G M E N T**

1. Heard Shri U.V. Bhosale, learned Advocate for the Applicant appeared for the part of arguments, Smt. R.N. Deshpande, the Applicant in person, Shri K.B. Bhise, the learned Presenting Officer for the Respondent Nos.2 & 3 and Shri I. Shaikh, the learned Advocate for the Respondent No.1.

2. The Applicant who was working in the office of State Election Commission was transferred to State Women Commission. She has approached this Tribunal with following prayers:-

- “(a) By a suitable order/direction the Respondent No.1 may be directed to release the payment of salary and allowances of the Applicant for the period from 1<sup>st</sup> January, 2017 to 12<sup>th</sup> January, 2017.
- (b) By a suitable order/direction the Respondent No.1 may be directed to send the Last Pay Certificate and updated Services Book of the Applicant to the Respondent No.3.
- (c) By a suitable order/direction the Respondent No.2 may be directed to regularize the compulsory waiting period of the Applicant from 13<sup>th</sup> January, 2017 to 18<sup>th</sup> April, 2017 and to make payment of salary and allowance for the said period.
- (d) By a suitable order/direction the Respondent No.3 may be directed to make payment of salary and allowances of the Applicant for the period from 19<sup>th</sup> April, 2017 till date.
- (e) By a suitable order/direction the Respondents may be directed to pay interest @ 18% per annum for delayed payment.
- (f) By a suitable order/direction the Respondents may be directed to pay costs.”

(quoted from page no.12 & 13 of the O.A. paper book)

3. Learned Advocate for the Applicant informs as follows:-

- (1) On 14.08.2017, she received salary for the period from 19.04.2017 to 31.07.2017, on 13.10.2017.
- (2) She received salary for the period from 13.01.2017 to 18.04.2017.
- (3) On 12.12.2017, she received salary for the period from 01.01.2017 to 12.01.2017.

Thus all prayers from (a) to (d) have been decided.

4. Hence, the only prayer which remains to be addressed (page no.13, paragraph no.9(e) is to pay her interest @18% per annum for the delayed payment, besides the costs.

**Admitted facts:-**

5. The Applicant joined as Accounts Officer in the office of State Election Commissioner on 30.01.2015. On 14.07.2016, she was transferred as Accounts Officer in the office of State Women Commission and Smt. Meena Saldanha was transferred in her place. Following this, the Applicant requested the Secretary, State Election Commission that she may be relieved in view of her personal and domestic difficulties.

6. Smt. Saldanha who was transferred at her place was due to retire in September, 2017 which was in hardly 9 months and therefore the State Election Commission requested for a panel of three incumbents' names with their A.C.R.s and service book for transferring the Applicant. Therefore, State Election Commission also decided not to permit Saldanha to join at the Applicant's place.

7. On 10.01.2017, the Finance Department issued orders stating that the Applicant along with 22 others who have been transferred earlier but not yet relieved should be deemed to have been transferred at the Government level and should join at the new place of posting immediately.

8. The Applicant, therefore, requested the Secretary, State Election Commission to relieve her. Without obtaining orders from State Election Commission, on 12.01.2017, the Applicant unilaterally prepared charge handing over memo and proceeded to the new assignment namely State Women Commission, who did not permit her to join.

9. The Election Commission took a note that she is remaining absent without permission. The Election Commission also noted that she has been transferred without consulting State Election Commission which was mandatory as per the letter from G.A.D. on 23.10.2016.

10. The Election Commission further noted that the Election Commission is a Constitutional body and the local body elections are due shortly. Therefore, services of the Applicant are essential (Exh. 'M', page no.44).

11. Respondent No.1 issued show cause memo dated 25.01.2017 for leaving the office on 12.01.2017 and remaining absent thereafter. The Applicant replied to the same on 30.01.2017 that she is relieved by Finance Department on 10.01.2017, as per their order, cited above.

12. The Respondent No.1 rejected the explanation on 18.02.2017. On 01.06.2018, the punishment given to the Applicant on completion of Departmental Enquiry has been quashed. However, Finance Department censured her and directed her to ensure that she extracts adequate work from her subordinates in proper manner. It further noted that she did not do adequate efforts in supervising subordinates for completing work allotted to them which resulted in delay in the Government work.

13. In view of the foregoing, the following issue needs to be replied:-

Whether the Applicant is entitled for interest of payment @18% for receiving salary belatedly and who is responsible for the same?

14. The learned Advocate for the Applicant has mentioned in his averment that the Respondent No.1 did not send Last Pay Certificate of the Applicant which resulted in non-payment to her by Respondent Nos.2 and 3. He further states in para no.6.15 as under:-

“6.15 The Applicant states that the Respondent No.1 has intentionally, not released the Applicant's salary for January, 2017 and has also intentionally not sent her Last Pay Certificate and Service Book. Copy of the noting dated 18<sup>th</sup> January, 2017 of the Respondent No.1, obtained through RTI, issuing orders to not give salary, Last Pay Certificate and Service Book, to the Applicant is annexed hereto and collectively marked as Exhibit -M.

(quoted from page nos.10-11 of the O.A.)

In para no.6.16 he states as under:-

6.16 The Applicant wants to humbly point out that the Respondent No.1 is not issuing the Last Pay Certificate in order to harass the Applicant. The Applicant has not received her salary for the last six months. The Applicant has gone through a lot of mental agony due to the attitude

of Respondent No.1. The Applicant further humbly states that even a suspended employee is paid subsistence allowance.

(quoted from page no.11 of the O.A.)

15. The learned Advocate has relied on following judgments:-

(1). **S.K. Dua Vs. State of Haryana and another (2008) 3 Supreme Court Cases 44:-**

“14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

(2) **Yuvraj Nathuji Rodye Vs. Chairman, MSEB, Bombay and Ors. (2008 (6) Mh.L.J.384):-**

“4. Before any interest can be granted on equitable consideration, it is necessary that the facts of the case should be examined to ascertain whether there are any special equities which would justify the grant of such interest although there is no provision in law for such grant.” [Union of India and Others Vs. Dr. J.K. Goel, 1995 Suppl (3) SCC 161]. Therefore, the Court can consider the facts and circumstances of each case while passing or granting interest on the due and payable amount even in the employer-employee relationship, basically even for want of service conditions.

6. In the present case, the Petitioner has claimed interest at the rate of 16% per annum, which according to us is a quite unreasonable. However, considering the facts and circumstances we direct the respondents to make payment of interest at the rate of 8% per annum on the amount due and payable.”

(3) **Sunilkumar Madanlal Agrawal Vs. State of Maharashtra and Ors. 2017 (4) ALL MR 536.**

“1. The only question urged and remains to be decided in this case is the payment of interest on the amount of Rs.3,04,925/- paid to

the petitioner on 13.12.2011 towards part payment of arrears of salary and balance of Rs.20,000/- paid on 15.05.2012 and what should be the rate of interest if to be awarded on such payment.

5. The Deputy Director of Education passed an order dated 23.03.2004 granting approval to the appointment of the petitioners as full time teacher in the subject of Physics from 16.02.2002. We also found that in spite of repeated reminders by the Office of the Deputy Directors of Education, respondent nos.4 and 5 failed to forward the salary bills of the petitioner for sanction till 2011. Upon submission of such bills in the year 2011 by the management, an amount of Rs.3,04,925/- was paid to the petitioner through the State exchequer on 13.12.2011, whereas the balance of Rs.20,000/- was paid by the management on 15.05.2012. Shri Deshpande, the learned Counsel appearing for the petitioner, relies upon the decision of the Division Bench of this Court in the case of Yuvraj Nathuji Rodye Vs. Chairman; Member (Administration) reported in 2008 CJ(Bom) 3291; dealing with the similar situation and granting the payment of interest at the rate of 8% per annum from the due date of payment.
  
6. From the factual position narrated above, we find that respondent Nos.4 and 5 have deliberately delayed the submission of bills to the Deputy Director of Education, from the date of passing of the order granting approval on 23.03.2004 till the date of actual release of payment on 13.12.2011 and 15.05.2012. We do not find any justification put forward by the respondents in spite of passing an order by this Court on 29.06.2017 permitting the respondents to file an affidavit, if any, on or before the next date to oppose the claim of interest. Shri Samarth, the learned Counsel appearing for respondent nos.4 and 5 prays for one week time to file an affidavit in the matter. However, we are not inclined to grant such time as the matter is pending since 2004 and in spite of order dated 29.06.2017 passed by this Court in presence of parties, the affidavit has not been filed till this date. Shri Samarth, the learned Counsel for respondent nos.4 and 5 vehemently opposed the grant of interest at 12% per annum as claimed in the petitioner. He submits that the petitioner is not entitled to any interest as the grant of approval by the Deputy Director of Education is on 23.03.2004. It is not possible to accept such contention, except the reduce the rate of interest from 12% per annum to 8% per annum.”

16. The learned Advocate for the Applicant in his rejoinder in para no.13, page no.84 further states as under:-

“ I say that I have followed the orders of the Finance Department, who is my Appointing Authority, while getting relieved from the Respondent No.1. I reiterate that I have not committed any irregularity by following the Government Orders.”

(quoted from para no.13, page no.84 of the O.A.)

The Applicant thus challenges the authority of the Respondent No.1 in their actions of not relieving her as well as withholding the Last Pay Certificate which resulted in delayed payment of the salary.

17. The Respondent No.1 in his affidavit has referred to the provisions of Indian Constitution and opinion of the Advocate General as mentioned in para no.5, page no.56-57 as under:-

“ 5. Advocate General of Maharashtra Shri A.G. Khambata has opined as follows:-

“Turning to the independence of the State Election Commission and the requirement for making available to it staff, infrastructure and a financial budget, the observation in paragraphs 26 and 27 of Tomar’s Case make it clear that the State Government is bound to render such assistance and Co-operation, financial and otherwise to the State Election Commission as the State Election Commissioner requires.

It will not be open to the State Government to refuse any assistance and co-operation sought unless it has cogent reasons for doing so. I add that this can be only in extraordinary and compelling circumstances and that in the ordinary course the State Government is bound to make available such assistance and co-operation as the State Election Commission requires. This is because, as held in Tomar’s Case, the State Government must respect the assessment, by the State Election Commission, of its own needs.”

(quoted from para no.5, page no.56-57 of O.A.)

Respondent No.1 in para no.6, page no.57 states as under:-

“6. In view of the above legal position, it is very clear that-

- (a) State Government has to provide all the resources including staff as per the assessment of State Election Commission.
- (b) Officers/employees from the government can be posted in and or posted out of Election Commission only after concurrence of the State Election Commissioner. It is not expected that government shall post the officer/staff as per its (government) choice and transfer them out of their own wish. This is necessary to ensure independent working of the Election Commission.”

(quoted from para no.6, page no.57 of O.A.)

18. The affidavit further refers to circular prohibiting transfer of the officer/staff without consulting with the State Election Commission (para no.7, page no.57) as under:-

“7. It is most respectfully submitted that by communication dated 23.01.2015 issued by Deputy Secretary, State Election

Commission informed the State Government about the difficulties faced in case officers/staff employees are transferred abruptly without consultation with the State Election Commission. Accordingly, State Government on 27<sup>th</sup> October, 2016 issued circular in which transfer of the officer/staff without consultation with the State Election Commission was prohibited. Hereto annexe and marked as an Exhibit 'A' is the copy of the circular issued by the State Government.

19. The affidavit states in para no.8 (V to X) as under:-

- “(v) Since Smt. Deshpande, Accounts Officer after getting the above order, got relieved unilaterally without informing either establishment branch or Secretary or State Election Commissioner. She gave an application in the registry of State Election Commission and got herself relieved. An application dated 12.01.2017 of Smt. Deshpande, Accounts officer is enclosed as Exhibit 'B'.
- (vi) Since the action of Smt. Deshpande of getting relieved unilaterally without taking anybody's permission in the State Election Commission was against the established norm of governance, State Election Commission sent letter dated 16.01.2017 to Finance Department to stay the transfer of Smt. Deshpande. A copy of the said letter was also marked to State Women Commission where Smt. Deshpande was allegedly posted. An office memorandum dated 25.01.2017 was accordingly issued by State Election Commission to Smt. Deshpande to immediately join the office or otherwise disciplinary action will be initiated against her.
- (vii) Thereafter, department of Accounts and Treasury vide its order dated 31.01.2017 allowed applicant to join office at DAT with effect from 19.01.2017 and kept the applicant on compulsory waiting. Thus factually, applicant was not working even on the post where she was allowed to have joined w.e.f. 19.01.2017. On 28.02.2017 State Election Commission wrote the letter to Secretary, Finance Department, Govt. of Maharashtra, Mantralaya calling upon them to submit reply in view of earlier communication and letters. Hereto annexe and marked as an Exhibit 'C' is a copy of letter dated 28.02.2017. By letter dated 08.03.2017, Under Secretary, Finance Department, Govt. of Maharashtra submitted an explanation in which assurance was given that hereinafter proper care would be taken before issuing the order of transfer of employees and officers. However, plain reading of the said letter clearly shows that fact is not disputed by the State Government that the Applicant was not properly relieved from the services of the State Election Commission.
- (viii) It may mention that Smt. Deshpande worked for total period of nearly 22 months (from 2.3.2015 to 12.01.2017) in the office of State Election Commission. During this period, she was on leave for more than 99 days. Further, she did not attend her official duties properly. During the tenure of work on the post of



Accounts Officer, Accounts Section, State Election Commission, it was her responsibility to maintain regular case book, deposit account and cash book of State Bank of India. It was the responsibility to update all the above books. She miserably failed in this. She further not exercised the required financial control and discipline in the office. Departmental enquiry was therefore proposed against her on 01.6.2017. The government vide its order no. [संलेको/आस्था-१/विचौ/न.क.५०-२०१७/सअ-३/२०१७/३९६/३२३२](#) dated 19.07.2017 started the departmental enquiry against Smt. Deshpande.

- (ix) Since Smt. Deshpande had got herself relieved unilaterally without taking anybody's permission in State Election Commission, her LPC and service book were not issued by the State Election Commission. The State Election Commission vide its letter No.रनिआ-२०१७/प्र.क.६७/ का-२ dated 07.07.2017 sought clarification of the government in this matter. Once clarification was received on 31.07.2017 her LPC and service book were released on 02.08.2017.
- (x) Since State Election Commission has issued her LPC and service book on 02.08.2017 nothing further is required to be done by the State Election Commission. Her salary upto December 2016 has been paid. The salary of 12 days of January 2017 shall be paid by the department where she will be posted subsequently. In this regard, government order [नो.संकीर्ण-१०११/संक१७/कोषा/प्र.५](#) dated 15.10.2013 is enclosed as Exhibit 'D'.

20. The affidavit states in para no.9, page no.62-63 as under:-

“9. ....

It is also clear that applicant has taken disadvantage of the order passed by the State Government and in fact is not properly relieved from the officer of State Election Commission. In fact, applicant has given incorrect information on the relieving form. State Election Commission had never relieved applicant from the services of State Election Commission.”

21. Respondent No.2 in their affidavit (para no.15.1 & 15.2, page no.101 & 102) stats as under:-

“15.1 The Directorate of Accounts and Treasuries has sent the proposal to Finance Department to regularize the waiting period of the Applicant from 13th January, 2017 (BN) to 18th April, 2017 (AN) vide it's letter dated 22 August, 2017.

15.2 The Finance Department vide its order No.क. संलेको २०१७/प्र.क. १५९/कोषा प्रशा-२, dated 06.09.2017 has regularized the waiting period of Applicant and authorized Urban Development Department to pay the Pay and Allowance.”

22. Learned P.O. for the Respondents underlined that the State Election Commission had directed not to issue her Last Pay Certificate (page no.13 of the compilation) and hence she could not be relieved (page no.14 of the compilation). Learned P.O. further contends that there is no provision for making payment of interest on delayed payment of salary.

23. The Respondent No.2, therefore urges to dismiss the Original Application.

**Finding with reasons:-**

24. As seen from the discussion above, the Applicant was working under the charge of the State Election Commission even when the Finance Department had issued order on 10.01.2017 relieving her at Government level. She was not working under State Government but under the State Election Commission which is the Constitutional body and different entity from the State Government. State Election Commission is not another department of the Government. The Applicant was working under very senior Constitutional body having the task of conducting the elections in free and fair manner. She did not have liberty of superseding the authority of State Election Commission. She cannot claim that as she has been appointed by the Finance Department, she shall not abide by the orders of State Election Commission or does not require to obtain necessary approval from them regarding her relief without substitution.

25. The action of the Applicant is clearly objectionable which has resulted in avoidable delay of her payment. She cannot blame the State Election Commission by stating that they were harassing her for taking legal position and asking her to perform legally and responsibly. Action by State Election Commission cannot be termed as harassment.

26. The punishment awarded to her after completing the Departmental Enquiry has been completed but the Finance Department has censured her for delaying the Government work allotted to her by the State Election Commission.

27. The prayers made by the Applicant regarding regularization of her waiting period as well as payment of salary to her have been already addressed in her favour.

28. The judgments cited by the Advocate for the Applicant do not appear to be relevant, as the facts in the present case are different.

29. I, therefore do not find any merit in her prayer for interest, as she herself is responsible for this avoidable delay, of late payment.

30. Therefore, Original Application is dismissed without costs.

**(P.N. DIXIT)**  
**MEMBER(A)**

sba