

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO.22 OF 2019  
IN  
ORIGINAL APPLICATION NO.1116 OF 2016**

Smt. Ulka Sachin Salunke )  
Aged : 40 Yrs., Working as Computer )  
Instructor, Having office at Government )  
Technical High School, Kavathe )  
Mahankal, District : Sangli and residing at )  
Survey No.32, Ambegaon [BK], Guru )  
Krupa Niwas, Opp. Mahadik Hostel, )  
Pune – 411 046. )  
Through her lawful Attorney Sachin )  
Pandurang Salunke. )...**Applicant**

**Versus**

1. Appellate Authority, )  
[Services and Accounts Related )  
Matters], Vocational Education )  
and Training Directorate [M.S], )  
Having office at 3, Mahapalika Marg,) )  
P.B. No.10036, Mumbai – 1. )
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Skill Development & Enterpreneurship )  
Department, Mantralaya, Mumbai. )...**Respondents**

**Applicant in person through Power of Attorney holder.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.**

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

**DATE : 04.02.2021**

**JUDGMENT**

1. Heard the Applicant in person and learned Chief Presenting Officer.

2. This is an application for review of order delivered by this Tribunal on 05.11.2019 in O.A.1116/2016 declining the interest on the arrears of pay and allowances already paid to the Applicant.

3. O.A.No.1116/2016 was filed challenging the order dated 04.03.2015 passed by Respondent No.1 for grant of consequential service benefits along with interest at the rate of 18% p.a. from the date of removal of service till payment and also challenged the order dated 30.07.2016 declining pay and allowances to the Applicant for the period from the date of removal of the Applicant from service till reinstatement (17.12.2008 upto 30.04.2014) and to grant consequential service benefits with interest at the rate of 18% p.a.

3. During the pendency of O.A.No.1116/2016, several interim orders were passed by the Tribunal and in pursuance of it, the arrears towards pay and allowances from the date of removal of service till reinstatement were paid. As such, except interest part, all other grievance were redressed.

4. The Applicant in person vehemently urged that the Tribunal has over-looked the principles behind grant of interest on the belated payment to which the Applicant was legally entitled. According to him, had Applicant got pay and allowances at appropriate time she would have used the said amount, but she was constrained to file litigation and it is only after the orders passed by the Tribunal, the pay and allowances and other monetary benefits were granted.

5. Per contra, the learned CPO submits that there is no administrative lapse or intentional delay on the part of Respondents, so as to claim interest. She has further pointed out that monetary benefits were already extended for the period in which the Applicant was not in service, and therefore, the claim of interest on such back-wages or other service benefits is not sustainable in limited jurisdiction of review.

6. The Tribunal while delivering a decision on 05.11.2019 has elaborately discussed all the events which were taken place during the pendency of O.A. It is in pursuance of interim orders the observation passed by the Tribunal, the Respondent No.1 granted pay and allowances for the period from 17.12.2008 to 30.04.2015 by order dated 03.12.2018 and within six months, sum of Rs.31,30,947/- was paid to the Applicant.

7. As regard interest part, this Tribunal held in Para Nos.13, 14 and 15 as under :-

**13.** There could be no dispute about the settled legal position that in case of belated payment of retiral benefits due to administrative lapses, the Government cannot shirk its' liability to pay interest, so as to compensate the employee. In the Judgment referred by the Applicant, the interest was granted on the belated payment of retiral benefits having noticed administrative lapses on the part of Government. However, in so far as the facts of the present case are concerned, what Applicant is claiming is the interest on Pay and Allowances of the period which was earlier treated as 'absence period' in view of removal from service. This is a case where after completion of D.E, the Applicant was removed from service and later she was reinstated. Initially, her absence i.e. from the date of removal of service till reinstatement was not treated as 'period spent on duty' and held not entitled for Pay and Allowances. However, in view of interim orders passed by the Tribunal as referred to above in Para Nos.5 and 6 of this order, the Respondents took remedial measures and by order dated 03.12.2018 treated absence period as 'duty period' and granted Pay and Allowances for the period from 17.12.2008 to 30.04.2015. Accordingly, the sum of Rs.31,30,947/- was paid toward Pay and Allowances for the period in which she was out of duty. Suffice to say, this is a case where the Applicant is reinstated in service after reversing the decision of her removal by the Respondents at their own.

**14.** At the cost of repetition, it would be apposite to mention here that the Respondents at their own took remedial measures during pendency

of this O.A. and granted Pay and Allowances for the period from 17.12.2008 to 30.04.2015. In other words, after reinstatement, 100% Pay and Allowances was paid by the Respondents themselves. The Applicant is now claiming interest on this Pay and Allowances for the period from 17.12.2008 to 30.04.2015.

**15.** True, in view of the decision of Hon'ble Supreme Court in **S.K. Dua's** case (cited supra) even in absence of statutory Rules, administrative instructions or guidelines, the employee can claim interest under Part (iii) of Constitution on the basis of Articles 14, 19 and 21 of Constitution of India. Therefore, the moot question posed for consideration is whether in facts and circumstances of the case, the Applicant is entitled to interest. Before any interest can be granted on equitable considerations, it is necessary to see whether there are any special equities, which would justify the ground of interest although there is no provision in law for such grant of interest. As stated above, the Applicant is claiming interest on back-wages, which was already paid to her. Needless to mention where the termination or removal from service is found illegal and the employee is reinstated in service, he is entitled to back-wages. In the present case, in pursuance of directions issued by this Tribunal suggesting to take remedial measures, the Respondents themselves granted 100% Pay and Allowances. The order of payment for 100% Pay and Allowances was passed on 03.12.2018 and within six months, the sum of Rs.31,30,947 was paid as per the details mentioned in Para No.9 of this Judgment."

8. Ultimately, this Tribunal held that, in fact, pay and allowances were paid for the period in which Applicant was not in service and no special equitable consideration exist to grant interest on such arrears of pay and allowances. The decisions referred and relied by the Applicant were also discussed in the order dated 05.11.2019.

9. As such, there is no such apparent error on the face of record which could be corrected in Review Petition, since the scope of Review Petition is very limited.

10. At this juncture, it would be apposite to reproduce Order 47 of CPC, which is as follows :-

**"1. Application for review of judgment.-** (1) Any person considering himself aggrieved.-

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.”

11. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC. The review is by no means an appeal in disguise whereby the matter is re-heard. True, under Order 47, Rule 1 of CPC, the Judgment may be opened to review, if there is mistake or error apparent on the face of record. An error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its powers of review. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. Suffice to say, it must be remembered that the Review Petition cannot be allowed as an appeal in disguise. There is clear distinction between an erroneous decision and error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in Writ Jurisdiction, whereas error apparent on the face of record can be corrected by exercise of review jurisdiction. This is fairly settled legal position.

12. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court ***Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715***, wherein it has been held that if an error is not self-evident and detection thereof requires longer debate and process of reasoning, it cannot be treated as error apparent on the face of record for

the purpose of Order 47 under Rule 1 of CPC. In other words, the order or decision or Judgment cannot be corrected merely because its erroneous view in law or on the ground that the different view could have been taken on account of fact or law, as the Court could not sit in appeal over its own Judgment. Similar view was again reiterated by Hon'ble Supreme Court in ***AIR 2000 SC 1650 (Lily Thomas Vs. Union of India)*** where it has been held that the power of review can be exercised for correction of mistake only and not to substitute a view. Such powers can be exercised within limits of statute dealing with the exercise of power and review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not ground for review.

13. It is apparent from the Review Application that the Applicant is seeking re-hearing of the matter on the point of interest, which is already declined by giving reasons in the order dated 05.11.2019. Needless to mention, this Court could not sit in appeal. There is no such apparent error on the face of record which could be corrected in revisional jurisdiction. In other words, the order or decision cannot be corrected even if it is erroneous and the remedy is to challenge the same before higher forum. It is well settled that the power of review can be exercised for correction of mistaken or apparent error of law and not to substitute a view taken on factual assessment of the matter. The review cannot be treated as an appeal in disguise. The powers of review can be exercised only on the ground enumerated in order 47 Rule 1 of C.P.C. and not otherwise.

14. This Tribunal is also guided by the decision of Hon'ble Supreme Court in ***Civil Appeal No.1694/2006 (State of West Bengal Vs. Kamal Sengupta & Anr.) decided on 16.06.2008*** wherein the Hon'ble Supreme Court has laid down well settled principles in Para No.22 of the Judgment, which are as under :-

**“28.** *The principles which can be culled out from the above noted judgments are :*

*(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.*

*(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*

*(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*

*(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*

*(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*

*(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.*

*(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*

*(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”*

15. Suffice to say, the claim of interest of the Applicant is already considered and rejected as per reasons mentioned in the order dated 05.11.2019. In such situation, the remedy is to challenge the same before higher forum for grant of interest and not by Review Application.

16. For the aforesaid reasons, I see no merit in Review and it deserves to be dismissed. Hence, the following order.

**ORDER**

The Review Application is dismissed with no order as to costs.

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

Mumbai

Date : 04.02.2021

Dictation taken by :

S.K. Wamanse.

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