

**IN THE HIGH COURT OF JUDICATURE AT  
BOMBAY  
BENCH AT AURANGABAD.**

**REVIEW APPLICATION NO.38 OF 2015  
IN  
WRIT PETITION NO.1652 OF 2013.**

Smt.Ratnaprabha Wd/o late  
Bhalchandra Sonawane and  
others. ... Applicants.

Versus

The State of Maharashtra  
and others ... Respondents.

...

Mr.P.R.Patil, advocate for the applicants.  
Mr.S.P.Deshmukh, A.G.P for the State.  
Mr.S.P.Shah, advocate for Respondent No.

**CORAM : S.V.GANGAPURWALA AND  
V.K.JADHAV, JJ.**

**Date : 22.12.2015.**

**PER COURT :**

1. Heard.

2. Vide the present application, the  
applicants seek review of the order passed by  
this Court dated 24.12.2014 in W.P.No.1652/2013,

whereby this Court had disposed of the Writ Petition observing that no relief can be granted to the petitioners as no plausible explanation is forth-coming for not filing the petition earlier. Some of the petitioners had retired more than 26 years prior to filing of the Petition. Some of them had retired almost 20 years prior to filing of the petition and the last petitioner had retired nine (9) years prior to filing of the petition. The Writ Petition was filed claiming the benefit of leave encashment as per statute 424(C) of the University Statute.

3. Mr.Patil, learned counsel for the petitioner submits that while passing the said order, this Court has not considered the judgment of the Apex Court in a case of **"S.R.Bhanrale Vs. Union of India and others"** reported in **(1996) 10 Supreme Court Cases 172**, and submits that when the retiral benefits are wrongfully withheld despite several numerous representations, the Respondents are not entitled to raise the plea of limitation. The learned counsel further submits that the cause of action for leave encashment

benefit is a continuous cause of action. The learned counsel relies on the judgment of the Apex Court in a case of **"Shiv Dass Vs. Union of India and others"** reported in **(2007) 9 Supreme Court Cases 274**, so also another judgment of Apex Court in a case of **"Union of India Vs. Tarsem Singh"** reported in **(2008) 8 Supreme Court Cases 648**. The learned counsel submits that the Grievance Committee had not disallowed the claim of the present petitioners. It had directed the amount to be paid by the State. However, this Court did not consider the said aspect. In similar set of facts, wherein the Grievance Committee had allowed the claim. This Court entertained the petition even after lapse of considerable period. Learned counsel relies on the judgment and order passed by this Court in W.P.No.8911/2011 with connected Writ Petitions dated 3.8.2015. According to the learned counsel, the same view is required to be followed in the present matter. They are entitled to the benefit of judgment in rem and is not affected by delay and laches. The learned counsel relies on the judgment of the Apex Court in a case of

**“State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others”** reported in **(2015) 1 Supreme Court Cases 347**. Learned counsel submits that the encashment is a recurring cause of action and issue of limitation does not arise. Learned counsel relies on the judgment of the Division Bench of this Court in a case of **“Khandesh College Education Society Vs. Shri Arjun Hari Narkhede and others”** and connected Writ Petitions decided on 9.6.2008. The learned counsel submits that when the claim made by the petitioners is legally sustainable, the delay need not be considered.

4. Mr. Shah, learned counsel for Respondents submits that in the present case the Grievance Committee had never directed Respondent-Institution to pay the benefit of leave encashment. The said judgment of the Grievance Committee is also not assailed. The learned counsel submits that this Court considered the inordinate delay caused in filing the Writ Petition. The claim of some of the petitioners was more than 26 years. Some of them

had completed 20 years after retirement. This Court relied on the judgment of the Apex Court in a case of **"State of Madhya Pradesh and another Vs. Bhailal Bhai"** reported in **AIR 1964 Supreme Court 1006**. The learned counsel submits that the judgment in Writ petition No.1652/2013 would not be relevant as in the said case the petitioners were in fact, seeking implementation of the order of the Grievance Committee passed in their favour granting them leave encashment. The scope of review is only on limited ground that is error apparent on the face of record. The Review can not be had only on the ground that subsequently some judgments had been passed. The applicants/petitioners accepted the order of the Grievance Committee. In **"Khandesh College Education Society Vs. Shri Arjun Hari Narkhede and others"** referred to supra and relied by the learned counsel for the petitioner, it is held that the claim is to be made within a reasonable time. According to the learned counsel, no good grounds for review are made out.

5. The powers of review are in a narrow

compass. The review can not be considered as an appeal in disguise. The review also can not be entertained only on the ground that some other view may be possible. This Court did not grant any relief to the present applicants in Writ Petition on the ground that the petition was filed after a long slumber, wherein some of the petitioners had retired 26 years back. Some about 20 years and the last petitioner retired was 9 years prior to filing of the Writ Petition. The case of **"Kachru Shankar Sahane died through L.Rs. Radhika Kachru Sahane and others Vs. The State of Maharashtra and others"** referred to supra decided by us was not on similar grounds. In the said case, the Grievance Committee had allowed the claim of the petitioners therein but the institution was not abiding by the same. It is in that context, this Court had intervened. In the present matter, the Grievance Committee had not directed the institution to satisfy the claim of the petitioners regarding benefit of leave encashment. In fact, direction was issued to the State. By the subsequent pronouncement of the Apex Court, it is held that State is not

responsible to make payment in respect of the leave encashment. The petitioners also had not assailed the order of the Grievance Committee.

6. We had relied on the judgment of the Apex Court in a case of "State of Madhya Pradesh and another Vs. Bhailal Bhai" referred to supra.

7. We had taken one plausible view. The other view of entertaining the petition even after a long delay may be possible, however, the same itself may not be a ground of review.

8. Considering the above, the Review Application is disposed of. No costs.

**(V.K.JADHAV, J.)**

**(S.V.GANGAPURWALA, J.)**



