

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

WRIT PETITION NO.5206 OF 2014

Association of College & University
Superannuated Teachers,
(Maharashtra) a Society registered
at No.MA-853/2009 under the
Provisions of the Societies
Registration Act, having its Head
Office at 20, Sawarkar Nagar,
N-5 (South), CIDCO, Aurangabad
Through it's President & Convener,
Principal Dr.M.A.Wahul **PETITIONER**

VERSUS

1] Union of India,
Through its under Secretary,
Ministry of Finance,
Department of Education,
New Delhi.

(Copy to be served on Assistant
Solicitor General Union of India,
High Court of Judicature of Bombay
Bench at Aurangabad)

2] The State of Maharashtra,
Through its Secretary, Higher and
Technical Department, Mantralaya
Mumbai-32.

3] The Director,
Higher Education,
Maharashtra State, Pune

4] The University Grants Commission,
Bahadurshah Jafar Marg., New Delhi

[Copies for respondents No.
1 to 4 to be served on Government
Pleader High Court of Judicature
of Bombay Bench at
Aurangabad)

RESPONDENTS

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Mr. S.G.Bhalerao, Advocate holding for Mr.
Y.R.Barhate, Advocate for the Petitioner
Mr. S.B.Deshpande, Assistant Solicitor
General, for Respondent Nos. 1.
Mr. S.B.Pulkundwar, AGP for the Respondent
Nos.2 and 3 / State
Mr. Alok Sharma, Advocate for the respondent
No.4.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL,JJ.**

Reserved on : 29.03.2016
Pronounced on : 06.04.2016

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable
forthwith, and heard with the consent of the
parties.

3] This Petition is filed with
following prayer clause:

A) By issuing writ of certiorari or any other writ, order or direction, this Hon'ble court may be pleased to quash and set aside to the Government Resolution dated 5.5.2009 issued by the Government of Maharashtra i.e. respondent no.2 and direct the respondent no.2 to give the effect to the Government Resolution dated 21st August, 2009 from 1.1.2006 and pay difference gratuity amount calculated as per maximum ceiling limit of Rs.7 Lacs with 12% interest per annum to the members of petitioner Association.

4] It is the case of the petitioner that the petitioner is the Association of College and University Superannuated Teachers (Maharashtra), which is a registered Organization under the Maharashtra Societies Registration Act, 1860. The main grievance of the petitioner Association pertains to discrimination made by the respondents while giving the gratuity amount to the teachers,

who retired between 01.01.2006 to 01.09.2009 and the teachers, who retired after 01.09.2009 in respect of enhanced gratuity ceiling limit as per recommendations of the 6th Pay Commission to their cases. It is further the case of the petitioner that, the teachers who are retired between period of 01.01.2006 to 01.09.2009 were paid gratuity as per maximum ceiling limit of 5 Lacs, vide Government Resolution dated 5th May, 2009, and the teachers who retired after 01.09.2009 were paid gratuity as per maximum ceiling limit of Rs.7 lacs vide Government Resolution dated 21st August, 2009, i.e. after a period of only 3 months new Government Resolution is issued by State of Maharashtra and ceiling limit of gratuity is enhanced from Rs.5 lacs to Rs.7 lacs.

5] Therefore, according to the petitioner, the members of the association should be given the same benefit in respect

of enhanced gratuity ceiling limit of Rs.7 lacs. The members of Association are retired during the period from 01.01.2006 to 01.09.2009. On the dates of their respective retirements, they were eligible and entitled to receive the amount of gratuity as per the recommendations made by the 6th Pay Commission. It is further the case of the petitioner that, the Government Resolution dated 21st September, 2009, issued by the Government of Maharashtra is arbitrary and has resulted in discrimination between the teachers, who retired during the period 01.01.2006 to 01.09.2009 and who retired thereafter. It is further the case of the petitioner that, other States implemented the recommendations of 6th Pay Commission w.e.f. 01.01.2006, without making any discrimination, except the Government of Maharashtra for the best reasons known to it.

6] The petitioner Association filed

Writ Petition No.5284/2011 before the High Court, regarding similar subject matter. The Writ Petition No.5284/2011, came to be dismissed on 26th September, 2011. Being aggrieved by the said order, the petitioner Association preferred Special Leave Petition before the Supreme Court, which was subsequently converted into Civil Appeal No. 908/2013 [Association of College & University Superannuated Teachers Vs. Union of India and others].

The Hon'ble Supreme Court allowed the said Appeal on 30th January, 2013 and set aside the cut of date prescribed in the said Government Resolution dated 05.05.2009, by holding that, the members of Association are entitled to the benefit of enhanced gratuity i.e. Rs.7,00,000/-. The Supreme Court further directed respondents to pay the said amount within 3 months from the date of order. The State Government was

supposed to pay difference of the gratuity amount in terms of Government Resolution dated 21st August, 2009, to the members of the petitioner. It is further the case of the petitioner that, the respondents have delayed payment beyond the period of three months, and therefore, it is clearly established that, the delay in payment of gratuity was attributable to administrative lapses, and therefore, the petitioner is entitled for the interest at the rate applicable to General Provident Fund Deposits on the amount of gratuity.

7] The learned counsel appearing for the petitioner invited our attention to the grounds taken in the Petition and submits that, in view of Rule 129-A of the Maharashtra Civil Services [Pension] Rules, 1982, where the payment of retirement gratuity has been delayed beyond the period of 3 months from the date of retirement, and

it is clearly established that, the delay in payment of gratuity was attributed to administrative lapses, then interest at the rate applicable to General Provident Fund Deposits shall be paid on the amount of gratuity. In the present case also interest is payable by the respondent no. 2 i.e. Government of Maharashtra, on the delayed payment of gratuity to the members of the petitioner association, because the delay in payment of gratuity to the members of petitioner association is caused due to the administrative lapses of the respondent no.2. The learned counsel appearing for the petitioner submits that, the provisions of sub-rule (4) (b) of Rule 129-A of the Maharashtra Civil Services [Pension] Rules, 1982, can be pressed into service by the State Government, only in case the State Government would have paid the differential amount voluntarily in accordance with the

revision in pursuance of the policy framed by the State Government in respect of payment of gratuity. However, in the facts of the present case, the State Government declined to grant benefit to the petitioner's members as per the revised policy framed by the State Government. It is submitted that, the petitioner filed Writ Petition seeking directions to the respondent State to pay differential amount in accordance with the revision in pursuance of the policy framed by the State Government in respect of payment of gratuity. However, Writ Petition was dismissed. The petitioners approached the Hon'ble Supreme Court, and the Supreme Court directed the State Government, to pay to the members of the appellant and other similarly situated employees the difference of gratuity in terms of Government Resolution dated 21st August, 2009.

8] The learned counsel appearing for

the petitioner in support of his contention that, the petitioners are entitled for the interest on delayed payment of the enhanced gratuity amount pressed into service exposition of the Hon'ble Supreme Court in the cases of *Megh Varan Sharma Vs. State of U.P. and Ors.*¹, *S.K.Dua Vs. State of Haryana and Anr.*², *State of Kerala and Ors. Vs. M. Padmanabhan Nair*³, *R.Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Anr.*⁴ and *The President /Secretary, Vidarbha Youth Welfare Institution (Society) Vs. Shri. Pradipkumar s/o Ramchandrarao Lambhate*⁵.

9] On the other hand, the learned AGP appearing for the respondent State submits that, the claim of the petitioner in respect of payment of gratuity amount stood satisfied

1 2015 (1) SCT 12 (SC)

2 AIR 2008 SC 1077

3 AIR 1985 SC 356

4 (1994) 6 SCC 589

5 2012 (2) Mh.L.J. 752

since the State Government has paid the amount as per the directions of the Supreme Court in Civil Appeal No.908/2013 [Association of College & University Superannuated Teachers Vs. Union of India and others]. The learned AGP further submits that, sub-rule (5) (b) of Rule 129-A of the Rules, makes an exception and, as such, the interest on delayed payment of gratuity is not liable to be borne by the State since differential payment is on account of liberalization of the provisions of the Rules and the petitioners are held entitled to receive the differential amount in accordance with the revision in pursuance to the policy framed by the State Government in respect of payment of gratuity.

10] We have heard the learned counsel appearing for the petitioner, and the learned AGP appearing for the Respondent – State. With their able assistance, perused the

pleadings and grounds taken in the Petition, annexure thereto, the relevant provisions of the Maharashtra Civil Service [Pension] Rules, 1982, and copies of other documents and the reply filed by the respondent – State. There is no dispute that, the claim of the petitioner in respect of payment of gratuity amount stood satisfied since the State Government is stated to have paid the amount as per the directions of the Supreme Court in Civil Appeal No.908/2013 [Association of College & University Superannuated Teachers Vs. Union of India and others]. According to the learned counsel appearing for the petitioner, the question remains to be addressed about the entitlement of the petitioner for the interest on the delayed payment of gratuity by the respondent – State as per revision. Though, the petitioners have prayed that, they are entitled for the interest on the payment of

gratuity, delayed beyond period of three months from the date of retirement, however, we do not think that the said prayer to pay interest on the delayed payment of retirement gratuity, can be granted in a manner as prayed by the petitioner. However, we find considerable force in the arguments of the learned counsel appearing for the petitioner that, though the Supreme Court directed the respondent State to pay to the members of the appellant and other similarly situated employees difference of the gratuity as already paid to other employees who retired after 01.09.2009, and enhanced gratuity payable in terms of Government Resolution dated 21th August, 2009, within three months from the date of receipt / production of copy of this order passed by the Supreme Court, the State Government has not paid the same amount within three months as ordered by the Supreme Court. Therefore, according to us,

the members of the petitioners are entitled for the interest on the delayed payment of enhanced gratuity payable in terms of the Government Resolution dated 21st August, 2009, beyond three months from the date of receipt / production of copy of the order passed by the Supreme Court before the respondent State, till the said amount was actually disbursed to the members of the petitioner.

11] In order to appreciate submissions of the learned AGP appearing for the respondent – State that, in view of the provisions of clause (b) of sub-rule (4) of Rule 129A of the said Rules, 1982, the petitioners are not entitled for the interest, it would be apt to reproduce said provision herein below:

(b) liberalisation in the provisions of these rules from a date prior to the date of retirement of the Government

servant concerned, no interest on the arrears of pension shall be paid.

12] In the facts of the present case, in spite of the directions given by the Hon'ble Supreme Court to pay the enhanced gratuity amount to the members of the petitioner's Association within three months from the receipt of the order by the respondent, admittedly, the said amount has not been paid within three months by the respondents.

13] The learned counsel appearing for the petitioner has placed reliance on the provisions of sub-rule (1) and (2) of Rule 129-A of the said Rules, which reads thus:

129-A. Interest on delayed payment of gratuity. - (1)
Whether the payment of retirement gratuity or death gratuity, as the case may be has been delayed beyond the

period of three months from the date of retirement or death, and it is clearly established that the delay in payment was attributable to administrative lapse, an interest at the rate applicable to General Provident Fund deposits shall be paid on the amount of gratuity, in respect of the period beyond three months :

Provided that, no interest shall be payable if the delay in payment of such gratuity was attributable to the failure on the part of the Government servant, to comply with the procedure laid down in this Chapter :

Provided further that no interest shall be payable in the case where a provisional gratuity is paid.

(2) Every case of delayed payment of retirement gratuity or death gratuity, as the case

may be, shall suo motu, be considered by the concerned Administrative Department, and where the Department is satisfied that the delay in payment of such gratuity was caused on account of administrative lapse, that Department shall sanction payment of interest after obtaining the admissibility report, in this behalf, from the Accountant General (Accounts and Entitlement), Maharashtra, Mumbai or Nagpur, as the case may be. The approval of the Finance Department for payment of such interest shall not be necessary.

14] Therefore, in our considered view, since the respondents did not pay the amount towards enhanced gratuity within three months as ordered by the Supreme Court, the members of the petitioner Association are entitled to

receive the interest as provided in the aforesaid provisions.

15] In the light of the discussion herein above, we direct the respondent nos. 2 and 3 to calculate the amount in the light of the provisions of Rule 129A of the said Rules, and disburse the same as expeditiously as possible, however, within 3 months from today.

16] Petition is partly allowed. Rule is made absolute in the above terms.

In view of disposal of Writ Petition, Civil Application No.9619/2015 stands disposed of.

Sd/-

[SANGITRAO S.PATIL]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE