

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.O. 683/2016 IN MCA ST. NO.7517/2016 IN W. P. NO. 2296/2015 (D)
 (THE STATE OF MAHARASHTRA & OTHERS **VERSUS** DR.MOHAMMAD BADRE JAMEEL ABDUL RAUF)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri N.R. Rode, Assistant Government Pleader for the applicants.

CORAM : SMT.VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATE : JULY 01, 2016.

Heard the learned Assistant Government Pleader for the applicants. None appears on behalf of the non-applicant, though served.

For the reasons stated in the application, the delay in filing the review application is condoned. The civil application is allowed and disposed of.

JUDGE

JUDGE

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By this review application, the applicants seek a review of the order dated 16.12.2015 in Writ Petition No.2296 of 2015.

Writ Petition No.2296 of 2015 was filed by the non-applicant for a direction to the respondents to the petition (applicants herein) to pay an amount of Rs.1,31,488/- to the applicant-Original petitioner with interest at the rate of 18% per annum.

It was the case of the original petitioner that he was working as a Laboratory Technician and at the time of his retirement, a wrongful recovery of Rs.1,31,488/- was made. The action of the present applicants was challenged by the original petitioner before the Maharashtra Administrative Tribunal. The original application was allowed by the order dated 07.05.2012 and the Maharashtra Administrative Tribunal held that there was no reason for the present applicants to deduct the amount from the original petitioner's pensionary

benefits. According to the original petitioner, in view of the order of the Tribunal, it was necessary for the present applicants to pay the said amount to the petitioner. According to the petitioner, the amount was paid to the petitioner during the pendency of Writ Petition No.2296 of 2015. Hence, the petitioner sought for interest on the said amount.

When the matter was heard by the Court on 16.12.2015, the learned Assistant Government Pleader did not point out that the present applicants had deposited the said amount on 18.08.2011. After the Maharashtra Administrative Tribunal decided the original application in favour of the petitioner, a writ petition was filed by the applicants. It is stated that in pursuance of the order passed by the High Court in Writ Petition No.4674 of 2010, the State Government, i.e. the present applicants, had deposited the amount of Rs.1,31,488/- in the Tribunal on 18.08.2011. It is stated that the learned Assistant Government Pleader did not get proper instruction on the date on which the matter was heard on 16.12.2015 and he was not able to point out that the amount was already deposited in the Personal Ledger Account of the Maharashtra Administrative Tribunal, on 18.08.2011.

We find on hearing the learned Assistant Government Pleader that the amount of Rs.1,31,488/- was deposited in the Personal Ledger Account of the Maharashtra Administrative Tribunal and, hence, the applicants could not have been blamed for the delay in making the payment of the amount in favour of the original petitioner in 2015 during the pendency of Writ Petition No.2296 of 2015. Since our order dated 16.12.2015 directing the payment of interest is based only on the observation that the amount of Rs.1,31,488/- was paid during the pendency of the writ petition and not earlier the present applicants were held liable to pay the interest. Since the

order is passed on a wrongful assumption of a fact that did not exist and since the wrongful assumption was in view of the lack of instructions received by the learned Assistant Government Pleader while the matter was heard on 16.12.2015, it would be necessary to set aside the order dated 16.12.2015 so far as it directs the present applicants to pay interest on the amount that was paid to the petitioner during the pendency of the writ petition at the rate of 7.5% per annum with effect from 07.02.2010.

Hence, for the reasons aforesaid, we set aside the order dated 16.12.2015 so far as it directs the present applicants to pay interest to the original petitioner at the rate of 7.5% per annum. Since the amount that was deducted from the retiral benefits of the petitioner was paid to the petitioner during the pendency of the writ petition, we allow this review application. The order that is sought to be reviewed is reviewed only to the aforesaid extent.

Order accordingly. No costs.

JUDGE

JUDGE

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