IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO. 1154 OF 2004
WITH
CIVIL APPLICATION NO. 6477 OF 2010

Laxman s/o. Tukaram Patil,
Age 68 years, Occu. Pensioner,
Retired Headmaster,
New English School, Jamner,
R/o. Ashirwad, Nagarkhana, Jamner,
Taluka Jamner, Dist. Jalgaon. **....Petitioner.**

Versus

1. Jamner Taluka Education Society,
Jamner, Through its President
Shri Abaji Nana Patil,
Age 75 years, Occu. Agriculture,
R/o. Jamner, Tal. Jamner,
Dist. Jalgaon.

2. The Headmaster,
New English School, Jamner,
Taluka Jamner, Dist. Jalgaon.

3. The State of Maharashtra,
Through Secretary,
School Department,
Mantralaya, Mumbai.

4. The Deputy Director of Education,
Nashik Division, Nashik.

5. The Education Officer (Secondary),
Zilla Parishad, Jalgaon.

6. The Accountant General,
(A & E) – I Maharashtra,
101, Maharshi Karve Marg,
Mumbai. **....Respondents.**

Mr. S.R. Barlinge, Advocate for petitioner.

Mr. P.P. Chavan, Advocate for respondent Nos. 1 and 2.

Mrs. V.N.Patil-Jadhav, A.G.P. For respondent Nos. 3 to 6.

CORAM : T.V. NALAWADE AND SANGITRAO S. PATIL, JJ.
DATED : June 19, 2017.

ORAL JUDGMENT :

. The petition is filed for giving directions to the respondents to pay interest at the rate of 18% p.a. to the petitioner due to delay caused in making payment of pension. The period is given as 31.5.1993 to 22.9.2002. Both the sides are heard.

2. The submissions made show that the petitioner was in the employment of respondent Nos. 1 and 2 as the Headmaster and his date of retirement due to superannuation was 31.5.1993. There were some allegations against him and so, he was first placed under suspension. Writ Petition No. 2580/1992 was filed in this Court and the petitioner succeeded in the said proceeding and order was made to reinstate him. Even contempt proceeding was filed as order made by this Court was not complied with by the employer. He was shown to be reinstated on 15.2.1993. Then he came to be terminated on 5.3.1993. The order of termination came to be challenged before the School Tribunal in appeal. In the appeal, stay order was made on 30.4.1993 and so, the termination was suspended. It can be said that for few days in the month of May 1993, he was allowed to work as Headmaster and then he retired on 31.5.1993.

3. The appeal filed by the petitioner to challenge the termination came to be allowed on 23.12.1993. As the matter was decided after the age of retirement, the only thing which the employer was expected to do was to process the matter of pension. It is the contention of the petitioner that the processing was not done and as it was done in the year 2001 properly, he started getting pension from September 2002 and till then he was getting the provisional pension which was less than the pension which was finalised in his favour. It is the contention of the petitioner that as per Rule 129-B of the Maharashtra Civil Services (Pension) Rules, it is the responsibility of the employer to pay interest as matter was not processed when pension had become due.

4. The learned counsel for the petitioner submitted that it was not clear case and as one criminal case was pending against the petitioner, the Accounts Officer refused to finalise the pension and the matter was referred back to the employer by the Accounts Officer. Such record is produced. The record shows that there was some doubt in the Office of Accounts Officer over the release of two advance increments in favour of the petitioner and then there were some deficiencies in the proposal. Those deficiencies were attempted to be removed by the employer. The last correspondence made by the Office of Accounts Officer shows that due to pendency

of criminal case which was filed by employer as a private complaint in respect of the same incident, the Accounts Officer had not finalised the pension. Ultimately, on 22.10.2001 the employer compromised the matter and due to that the private complaint came to be disposed of and then again processing of the matter was done.

5. The learned counsel for the employer submitted that when the petitioner himself was the Headmaster, it was his job to do the needful and as he did not process the matter during his tenure, direction cannot be give to the employer to pay the interest. This submission is not acceptable. Admittedly, the employer had filed a private complaint against the petitioner and he had avoided to reinstate the petitioner even when the order of suspension was set aside by this Court. The petitioner retired due to superannuation on 31.5.1993 and so, it can be said that atleast after the retirement of the petitioner, it was the responsibility of the respondent Nos. 1 and 2 to see that the matter of pension was immediately processed. Though there is some correspondence to show that the processing was done, the letters written by the Accounts Officer show that there were deficiencies and for that, the petitioner could not have been blamed. It can be said that only after the disposal of the criminal case in the year 2001, the processing picked up the speed and then the matter of pension was finalised by the Accounts

Officer. Thus, apparently, there was fault on the part of the employer.

6. The Pension Rules show that the processing needs to be started eight months prior to the date of retirement due to superannuation. In view of this circumstance and aforesaid peculiar circumstances, this Court holds that the period of eight months could have been given to the employer from the date of decision of School Tribunal and for that the employer cannot be directed to pay the interest on the amount which was payable as pension to the petitioner. In respect of the remaining period, there is no justification with the employer in not taking concrete steps to see that the pension matter was finalised. On this point, the learned counsel for the petitioner placed reliance on some observations made by the Apex Court in **Civil Appeal No. 6770 of 2013 [State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.] decided on August 14, 2013.** The Apex Court has discussed the Rules of Jharkhand State in this regard and it is observed that there was no Rule preventing the payment of pension amount even if the criminal case or departmental enquiry was pending. In view of the aforesaid peculiar circumstances, this Court holds that there is no need to refer the Rules of this State and the aforesaid material is sufficient to give directions to the respondents to pay the interest at the rate as provided for the General Provident Fund as such rate is

mentioned in the Pension Rules. In the result, following order is made.

O R D E R

1. The Writ Petition is allowed.

2. The respondent Nos. 1 and 2/employer are hereby directed to pay interest at the rate, which was fixed for General Provident Fund for the relevant years, on the difference between the provisional pension and the final pension for the period which would start after eight months from the date of decision of the School Tribunal in the appeal filed by the present petitioner.

3. The interest on difference is to be paid to the petitioner within a period of four months from today.

4. Civil Application No. 6477 of 2010 for fixing early date of hearing the petition stands disposed of.

Rule is made absolute accordingly.

[SANGITRAO S. PATIL, J.] **[T.V. NALAWADE, J.]**

ssc/