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

**CIVIL APPLICATION NO.13757 OF 2019
IN/WITH
REVIEW APPLICATION (ST.) NO.33715 OF 2019
IN
WRIT PETITION NO.12433 OF 2015**

Govind S/o Pandurang Rathod,
Age: 63 years, Occu: Pensioner,
R/o. Near Kalikadevi Temple,
Sadguru Nagar, Latur,
Tq. & Dist. Latur

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32
2. The Superintendent of Police,
Superintendent of Police office,
Latur, Tq. & Dist. Latur

..RESPONDENTS

Mr V. D. Godbharle, Advocate for applicant;
Mr K. N. Lokhande, Advocate for respondents

**CORAM : PRASANNA B. VARALE
AND
ANIL S. KILOR, JJ.**

DATE : 26th November, 2019

ORAL ORDER:

Heard Mr Godbharle, learned Counsel appearing on behalf of
the applicant at length.

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2. The present Review Application (St.) No. 33715 of 2019 is filed alongwith Civil Application No.13757 of 2019 for condonation of delay. In Civil Application No.13757 of 2019, the basic prayer is prayer (A), which reads thus:

" A. Allow this application by condoning the delay of 3 years and 62 days caused in filing of the review petition and for that purpose issue necessary order."

3. The civil application is as brief as it could be and the reason for delay is reflected in paragraph No.4 in a sweeping statement, which reads that the applicant states that the delay is neither deliberate nor intentional. In paragraph No.3, an attempt is made to provide some excuses as the grounds, that the daughter of the applicant is of 29 years of age and is unmarried and his two sons are also of marriageable age. We are unable to find any merit either in a ground so casually taken or in a sweeping statement so as to consider the application. This is the application filed with most casual approach, wherein delay of 3 years & 62 days is sought to be condoned on a sweeping statement. We are unable to find any convincing reason prompting us to entertain this application and condone the delay. At this stage, learned Counsel for the review applicant submitted that the merits of the review application may be considered by this Court.

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4. Though we were not inclined, but for the insistence of the learned Counsel, we undertook the exercise of assessing the merits of the review application. Interestingly enough, in the review application, the only ground submitted is, this Court dismissed the writ petition only by considering Sub-Rule (5) of Rule 68 of the Civil Services (Leave) Rules, 1981, whereas in the matter of the petitioner, Sub-Rule (6) would play a role and not Sub-Rule (5).

5. On going through the record of Writ Petition No.12433 of 2015, it clearly reveals that other Counsel was representing the petitioner in Writ Petition No.12433 of 2015 and not the present Counsel, who has filed the present review application.

6. On perusal of the order of this Court, dated 18th July, 2016 passed in the writ petition, it clearly reveals that Counsel for the petitioner advanced his submissions on two counts, firstly, relying on the judgment of Honourable the Apex Court in the matter of State of Jharkhand and ors. Vs. Jitendra Kumar Srivastava & anr. and secondly, a ground was raised on an order passed by the authority, namely, Superintendent of Police, Latur. Insofar as reliance placed on the judgment of the Apex Court (referred supra) is concerned, the Division Bench referred to the distinguishing factors in clear words and assigned the reasons as to how the judgment of the Honourable the

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Apex Court was not applicable in the petition filed by the petitioner. Secondly, it was the submission advanced by learned A.G.P. placing reliance on the specific provisions of the Rules and the Counsel for the petitioner only took the other ground of the order passed by Superintendent of Police. Dealing with that ground also, the Division Bench found that initially though the order was passed by Superintendent of Police, Latur, the same was cancelled by other officer realising the mistake committed by his predecessor. The Division Bench, again in clear words was pleased to observe that there cannot be quarrel on the proposition that the retired employee is entitled for the pensionary benefits and to receive such benefits, which are recognized as a right by Article 300-A of the Constitution of India, however, in the present case, there is specific Rule to withhold the payment of the leave encashment during the pendency of the departmental enquiry and considering that view of the matter, the Division Bench could not find any favour with the petitioner and petition was dismissed.

7. Now, altogether a new ground is raised in review application by placing reliance on Sub-Rule (6) of Rule 68 of the Civil Services (Leave) Rules, 1981. We are unable to consider this ground at the threshold itself, for a simple reason that this is altogether a new ground raised in the review application by the petitioner, which was not at all a

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ground raised in the petition nor submitted orally by the Counsel, who was representing the petitioner.

8. Merely because the review applicant changes the Counsel and the Counsel finds some grounds in the Rules cannot be a ground prompting us to entertain the review application by not only expanding the scope of review application, but considering the review application as if it is a fresh writ petition and this Court is deciding the writ petition on its merits.

9. Considering all the aforesaid reasons, we are of the clear opinion that the application for condonation of delay is thoroughly meritless and equally the application seeking review of the order of this Court, dated 18th July, 2016 is meritless. Resultantly, the civil application and the review application are dismissed.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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