R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2567 OF 2018

Malini Damodhar Kale (since deceased)
Jayavant Damodhar Kale .. Petitioner

Versus

Maharashtra Institute of Labour Studies & Anr. .. Respondents

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- Mr. A. Napahde i/by Ms. Ambika P. Singh for the Petitioner
- Mr. Milind More, AGP for Respondent No. 2 - State

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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : AUGUST 27, 2019.

ORAL ORDER (Per Akil Kureshi, J.)

1. The petitioner has challenged an order dated 16.6.2016 passed by the Maharashtra Administrative Tribunal, Mumbai (**"Tribunal"** for short) to the extent under such order, the petitioner is not awarded interest on delayed payment of pensionary and other retiral benefits.

2. The petitioner having passed away during pendency of the petition, this petition is pursued by her brother as her legal heir.

3. Brief facts are as under:-

The petitioner was appointed on temporary basis as a Field Supervisor in the Labour Department of Government of Maharashtra in the year 1972. She worked in that capacity till the year 1976. She was appointed on permanent basis on 1.9.1976 as a Faculty Assistant under the Commissioner of Labour, Bombay. In the year 1980, she was promoted to the post of Lecturer, field work. On 3.12.1980, in relation to the requirement of an employee having proficiency of the local language, the petitioner wrote to the employer stating that her mother tongue was Marathi. She had passed SSC examination with Hindi as second language. However, she was unable to produce SSC certificate since it was misplaced by her. The petitioner would point out that after releasing her first increment on 1.8.1981 during her entire service career, no further increments were released on the ground that she failed to produce such certificate.

4. On 30.6.2000, the petitioner retired on superannuation. She was, however, not paid her pensionary benefits. There is nothing on record to suggest that the petitioner made a grievance or representation about non-payment of retiral benefits for a long time. In the meantime on 9.3.2012, respondent No. 1 wrote to the petitioner stating that since she had not passed her medical examination as well as Marathi and Hindi examination, her pension cannot be released. Only in March 2012, the petitioner wrote to the respondents requesting to grant her exemption from passing Marathi language departmental examination. On 5.11.2015, the petitioner filed Original Application No. 988 of 2015 before the Tribunal for releasing her yearly increments and the pensionary benefits.

5. The Original Application came to be partly allowed. By the impugned judgment, the Tribunal was of the opinion that the petitioner cannot seek increments. In paragraph 6 of the judgment, the Tribunal discussed the facts on record at length and noticed that despite repeated letters from the respondents, the petitioner had failed to produce her SSC certificate and mark sheet. The Tribunal wondered why even if the original certificates were lost, the petitioner could not produce duplicates thereof. It was, therefore, concluded that the petitioner alone was responsible for stoppage of her increments since despite repeated reminders from respondents, she was unable to submit the required documents.

6. With respect to the pension, however, the Tribunal was of the opinion that there was nothing in the rules which would enable the respondents to withheld the pension on the ground of non-passing of the departmental examination in Marathi or for non-production of medical fitness certificate. The second observation was in the context of the objection of the department that the petitioner had not appeared before the Medical Board nor produced her fitness certificate for confirmation / continuation in service. Be that as it may, the Tribunal overruled these objections and ordered payment of pensionary and other payable retiremental benefits. There was, however, no direction for payment of interest thereon.

7. In the meantime, the department itself had passed an order on 4.6.2016 exempting the petitioner from both the requirements namely of passing departmental examination in Marathi language and of producing medical certificate of fitness. The petitioner, therefore, filed a Review Petition before the Tribunal and brought the said documents on record. The Tribunal refused to modify its order, upon which, this petition has been filed.

8. Learned counsel for the petitioner vehemently contended that the petitioner was not responsible for late release of her pensionary benefits. He drew our attention to sub-rule (1) of Rule 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 ("**said Rules**" for short) and submitted that since the delayed payment of pension as not attributable to the employee, interest at the prescribed rate should have been awarded. Learned counsel further submitted that pension is valuable right and cannot be denied on the ground of delay and latches. In fact, the Government had delayed releasing the pension for no apparent reasons at all. The pension being a legal right and not bounty, the State should not be allowed to adopt a lethargic approach. He further submitted that when such valuable right is at stake, the Government's inaction or delay must be viewed seriously. In support of this contention, learned counsel for the petitioner relied on following decisions:-

1. State of Kerala Vs. M. Padmanaban Nair
(1985) 1 SCC 429;

2. D.D. Tewari Vs. Uttar Haryana Bijli Vitaran
(2014) 8 SCC 894;

3. Eurico Santana Vs. State of Maharashtra
1996 SCC Online Bom. 382;

4. Fatma Braganza Vs. Bombay High Court
2012 SCC Online Bom 813;

5. Bhag Singh Vs. UT Chandigarh
(1985) 3 SCC 737;

6. Madras Port Trust Vs. Hymanshu
International (1979) 4 SCC 176;

7. Urban Improvement Trust Vs. Mohan Lal
(2010) 1 SCC 512;

8. Universal Drinks Vs. Union of India
1984 SCC Online Bom 502;

9. Rajendra Shankar Vs. State of Chattisgarh
(2015) 10 SCC 400;

10. Commissioner of IT Vs. Mitsubishi
2008 SCC Online Del 1482.

9. On the other hand, learned AGP opposed the petition and supported the judgment of the Tribunal. He submitted that no case for interest is made out particularly looking to the provisions contained in Rule 129-B of the said Rules.

10. Rule 129-B of the Rules pertains to interest on delayed payment of pension and reads as under:-

> "(1) If the payment of pension has been authorized after six months from the date when its payment became due and it is clearly established that the delay in payment was attributed to administrative lapse, interest at the rate of 10 per cent per annum in respect of the period beyond six months shall be paid on the amount of pension:
>
> Provided that, no interest shall be payable if the delay in payment of pension was attributed 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 for the period for which a provisional pension is sanctioned. In case of Government Servant to whom provisional pension is sanctioned an interest as provided shall be paid after a period of six months from the cessation of provisional pension till the final pension is authorized."

In terms of sub-rule (1) of Rule 129-B thus, if any payment of pension has been authorized after six months from the date when it becomes payable and it is clearly established that the delay in payment was attributed to administrative lapse, interest at the rate of 10 per cent per annum in respect of the period beyond six months would be payable. The first proviso of this Rule provides that no interest would be payable if the delay in payment of pension was attributed to the failure on the part of the Government servant to comply with the procedure laid down in the Chapter.

11. The facts of the present case are glaring. As noted, the petitioner retired on superannuation w.e.f. 30.6.2000. During her active service, she was time and again called upon either to pass the departmental Marathi language examination or to produce SSC certificate which would enable her to seek exemption, she did neither. Even after retirement, for the first time, she requested for exemption in the year 2012. In the year 2015, for the first time, she approached the Tribunal complaining about non-release of increments during her active service and non-payment of retiral benefits after superannuation. As noted, the Tribunal rejected her claim for release of increments on the ground that she had not fulfilled the necessary requirements though reminded repeatedly. With respect to pension, the Tribunal overruled the objections of non-passing the departmental examination as well as non-production of medical fitness certificate. The Government had put up bonafide grounds why it was unable to release the pension. Such grounds were overruled by the Tribunal. However, this would not fall within the expression that the delay was attributable to administrative lapses. In fact, the first proviso to sub-rule (1) of Rule 129-B would be clearly applicable.

12. As noted, the department itself has now exempted the petitioner from passing the examination which was a clog on her receiving her increments. Despite rejection of this claim of the petitioner by the Tribunal, it appears that on account of such exemption order, she received the increments. By virtue of the Tribunal's judgment, she has also received her pensionary benefits. No case for interest on delayed payments is made out. Hence, the petition is dismissed.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**