IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1248 OF 2021

Pratibha Sanjay Padamalwar	**}**	**Petitioner**
Versus		
Municipal Corporation of Greater	**}**	
Mumbai and Ors.	**}**	**Respondents**

Mr. Subhash V. Gutte for the petitioner.

Mr. Suresh S. Pakale i/b. Ms. Aruna K. Savla for respondents 1 to 5 (MCGM).

CORAM: DIPANKAR DATTA, CJ &
V. G. BISHT, J.
DATE : FEBRUARY 1, 2022

P.C.:

1. The petitioner is the widow of a former employee of the Municipal Corporation of Greater Mumbai (hereafter "the MCGM", for short), who expired on 27th September 2019. While in service, the petitioner's husband (hereafter "the employee", for short) was certified permanently unfit to render further service by Dr. Sangeeta Rawat, Professor and Head of the Department, Department of Neurology, KEM Hospital, Mumbai on 11th August 2018. In pursuance of such certificate, the MCGM issued a notice dated 28th January 2019 declaring that the employee "is deemed Permanently Unfit with effect from 11/08/2018".

2. In terms of the Mumbai Municipal Corporation Pension Rules, 1953 (hereafter "the Pension Rules", for short), the employee was entitled to leave encashment, provident fund, gratuity and pension on account of retiral benefits. Such retiral benefits, due and payable to the employee, were paid

by the MCGM belatedly. Aggrieved thereby, this writ petition was instituted by the petitioner on 8th February 2021 seeking interest on delayed payment of all retiral benefits.

3. On 4th March 2021, a coordinate bench of this Court issued Rule on the writ petition. The MCGM was, thus, expected to answer the Rule. Instead of so answering, what we find is a cryptic affidavit-in-reply filed by the MCGM. Despite the Court having admitted the writ petition by issuance of Rule, curiously, the affidavit says that it is filed for the limited purpose of admission of the writ petition and that the deponent has not traversed all the paragraphs of the writ petition. The requirement of answering the Rule is not to be treated as an empty formality. We deprecate the manner in which the MCGM has sought to place its version before the Court and would expect its officers looking after court cases to be more vigilant in future.

4. Be that as it may, it is not in dispute that the Provident Fund dues in a sum of Rs. 8,96,509/- were paid on 16th September 2019; dues on account of Gratuity in a sum of Rs. 7,98,949/- were paid on 22nd July 2020 and arrears of pension payable to the employee and family pension, to which the petitioner is entitled, were paid on 1st January 2021. Although in paragraph 3(c) of the writ petition we see the figure of Rs. 2,92,823/- to have been printed in a tabular chart, there is no indication as to what it stands for. We have been informed by Mr. Gutte, learned advocate for the petitioner that the said figure constitutes leave encashment dues, which were released in favour of the petitioner in the early part of 2020.

5. Mr. Pakale, learned advocate for the MCGM, however, submits that the sum of Rs. 2,92,823/-, on account of leave encashment dues of the employee, was released on 22nd March 2019. Despite perusing the writ petition as well as the reply affidavit of the MCGM, we have not been able to trace any averment as regards the exact date on which leave encashment dues were paid to the petitioner. Indeed, it was the primary duty of the petitioner to indicate the exact date. In the absence of any indication in that behalf, we accept Mr. Pakale's statement that the payment was made on 22nd March 2019. We are, accordingly, disinclined to pass any direction granting interest on leave encashment dues in favour of the petitioner.

6. However, on consideration of the pleadings as well as the provisions of Rules 55A and 55B of the Pension Rules, we are of the considered opinion that the petitioner is entitled to succeed in her prayer for grant of interest *qua* delayed payment of gratuity and arrears of pension/family pension.

7. Rule 55A as well as 55B of the Pension Rules ordain that interest would be payable on delayed payment of gratuity and pension, respectively, beyond the particular periods specified therein from the date when such payments become due, if it is clearly established that the delay in payment is attributable to administrative lapses.

8. Having perused the reply affidavit of the MCGM, it appears to us that the officers, who dealt with the relevant files, took their own sweet time to settle the claims for gratuity and pension and in the process, there has been substantial delay, thereby attracting the provisions of Rules

55A and 55B of the Pension Rules and warranting grant of interest in favour of the petitioner. Certain dates indicating how the files progressed for determining the quantum of dues and settlement of the claims pertaining to Gratuity, Provident Fund and Pension have been referred to in sub-paragraphs (d) to (f) of the reply affidavit as justification, although it is reflective of the snail's pace at which the files moved.

9. Mr. Pakale has, however, contended that the lapse, if there be any, was neither intentional nor *mala-fide*. This submission, in our view, does not advance the case of the MCGM. The question whether there has been administrative lapse is required to be ascertained from the surrounding circumstances bearing in mind the spirit of the relevant rules. These rules have been framed to remedy the mischief that could be caused by reason of delayed payment of retiral benefits to retired employees of the MCGM and hence are to be treated as beneficial legislation. In present day society, the delays are largely attributable to the commonplace bureaucratic methodology imbued with note-making, file-pushing and passing-on-the-buck ethos. These are, as in this case, quite often projected as protective gears against challenges or criticism. Rules 55A and 55B of the Pension Rules have been framed with a noble object of ensuring that if a retired employee does not receive his retiral benefits, which is his right, within the time specified therein, the employer has to bear the liability of interest. Such noble object of Rules 55A and 55B would be entirely defeated if a view were taken to absolve the employer of the liability to bear interest based only on the dates of movement of the files.

10. As has been noticed above, the employee was finally declared medically unfit for service and he retired on 28th January 2019. Although there were materials before the MCGM in this regard in the form of a medical certificate issued by the Professor and Head of the Department, Department of Neurology, KEM Hospital, why it took the MCGM time from 11th August 2018 till 28th January 2019 to declare the employee as medically unfit has not been explained. Since the employee stood retired with effect from 11th August 2018, that date has to be reckoned as the crucial date based whereon entitlement of the employee to receive his retiral dues should be counted and not from 28th January 2019. Had there been any explanation offered by the MCGM for the delay of more than 5 (five) months after 11th August 2018, we could have considered such explanation in the proper perspective. However, in the absence of any explanation worthy of consideration, the conclusion is irresistible that the MCGM had no explanation to offer and, therefore, has to suffer the consequences spelt out in Rules 55A and 55B of the Pension Rules.

11. Viewed in the above light, we hold that payment of provident fund in favour of the petitioner on 16th September 2019, payment of gratuity on 22nd July 2020 and release of arrears of pension that had accrued in favour of the employee till his lifetime monthly pension to the petitioner on and from 1st January 2021 has not been explained with sufficient clarity in the reply affidavit filed by the MCGM so as to dissuade us from holding that it is not a clear case of administrative lapse.

The mere mention of certain dates with regard to the stages of progress that were achieved in ultimately settling the claims are neither legitimate explanations for the delay in release of payment nor could be brushed aside as part and parcel of the normal functioning of the impersonal Government machinery. We are of the firm view that the petitioner is entitled to interest in terms of Rules 55A and 55B of the Rules of 1953 on delayed payment of gratuity and arrears of pension/family pension.

12. We are conscious that the Pension Rules do not expressly provide for interest on delayed payment of provident fund dues. However, such interest can be claimed by the petitioner in view of the provisions of Articles 14 and 21 of the Constitution of India. We draw guidance for this conclusion from the decision of the Supreme Court in **S. K. Dua vs. State of Haryana**[1].

13. Also, it has to be remembered that awarding interest on delayed payment is not to be construed as penalty or a punishment as has been explained by the Supreme Court in **Alok Shankar Pandey vs. Union of India and Ors.**[2]. There, the Supreme Court held thus:

> "9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if *A* has to pay *B* a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had *A* paid that amount to *B* 10 years ago, *B* would have invested that amount somewhere and earned interest thereon,

[1] **(2008) 3 SCC 44**
[2] **(2007) 3 SCC 545**

> but instead of that *A* has kept that amount with himself and earned interest on it for this period. Hence, equity demands that *A* should not only pay back the principal amount but also the interest thereon to *B*."

14. In such view of the matter too, we are also of the clear opinion that the petitioner has a legitimate claim to award of interest on delayed payment of provident fund dues, which were released on 16th September 2019, i.e., a mere 11 (eleven) days before the employee's death.

15. We, therefore, proceed to dispose of this writ petition by the following directions:

(i) The petitioner will be entitled to interest at the rate of 9% p.a. for delayed payment of provident fund dues of her husband with effect from 11th August 2018.

(ii) Insofar as interest on delayed payment of gratuity, and arrears of pension/family pension are concerned, the petitioner will be entitled to interest, which must be calculated in terms of the provisions contained in Rules 55A and 55B of the Pension Rules.

(iii) The sum constituting interest on all the aforesaid counts must be released in favour of the petitioner as early as possible, but not later than 3 (three) months from date of receipt of a copy of this order.

(iv) The petitioner shall, however, not be entitled to any interest on payment of leave encashment dues.

16. There shall be no order as to costs.

(V. G. BISHT, J.) **(CHIEF JUSTICE)**

SALUNKE J V Digitally signed by SALUNKE J V Date: 2022.02.02 10:16:01 +0530