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

**REVIEW APPLICATION NO. 59 OF 2024
IN
WRIT PETITION NO. 11133 OF 2023.**

The Secretary, Gramin Shikshan Prasarak Mandal
at Walandi, Taluka Deoni, District Latur and another
Versus
The State of Maharashtra and others.

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Mr. V.D. Hon, Senior Advocate i/b. Mr. V.B. Jadhav, Advocate for the
applicants.

Mr. T.M. Venjane, Advocate for respondent Nos. 4 to 7
Mr. A.M. Phule, AGP for respondent Nos. 1 to 3.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 29th NOVEMBER, 2024.

ORDER :-

1. The applicants seek review of the order dated 18.3.2024 passed by this Court in W.P. No. 11133 of 2023 by which the writ petition filed by respondent Nos. 4 to 7 has been allowed and directions are given for release of the arrears of family pension in favour of respondent No.4 alongwith interest @ 9% p.a., from 30.4.2021 till actual realization of the amount. The liability to pay interest has been fixed against review applicants (original respondent Nos. 4 to 5) observing that they failed to forward proposal within reasonable time. Similarly, directions have been issued to the Deputy Director of Education and Education Officer, Zilla

Parishad, Latur to clear bills submitted towards outstanding salary of the deceased employee from December, 2020 to January, 2021. The liability to pay interest on arrears @ 6% p.a. has been fixed against applicants w.e.f. 30.4.2021 till actual realization of the amount.

2. Mr. Hon, learned Senior Advocate appearing for the applicants submits that on 18.3.2024, the writ petition was circulated by advocate for petitioners (respondent Nos. 4 to 7) without intimating the advocate for respondents (applicants). Although reply was ready, it could not be tendered on record of this Court. Consequently, order under review has been passed.

3. Mr. Hon, would submit that on 14.6.2023, the Government of Maharashtra through its School Education and Sports Department, issued a Government Resolution approving grant of family pension to School employees died during course of employment, The benefit has been extended to employees who were working on establishment of schools receiving 100% grant-in-aid after 1.11.2005. He would submit that the eligibility of the writ petitioners to receive family pension has been first time approved under the aforesaid Government Resolution. Accordingly, second proposal for grant of family pension was moved by the applicants on 24.7.2023. Since certain deficiencies were pointed out by the office of Deputy Director of Education, third proposal for family pension was submitted on 18.10.2023. Therefore, there is no delay on the part of applicants in making or perusing proposal for family pension. However, aforesaid aspects could not be brought to the notice of the court at the time of hearing for want of affidavit in reply.

4. Mr. Hon would further submit this Court observed that respondent Nos. 4 and 5 (applicants) have not forwarded pension proposal within reasonable time and only on interference by Divisional Deputy Director of Education vide his letter dated 10.7.2023, the proposal was moved. He submits that such observation is inconsistent with factual aspect of the matter. He points out that on 12.12.2021, School Committee resolved to condone the absence of deceased from duty and sent proposal to competent authority for releasing his salary for the period of absence. Said discretion is exercised by the School Committee in the interest of the employee on humanitarian ground. He would further urge that aforesaid exercise was undertaken on the basis of application dated 21.9.2021 submitted by wife of deceased i.e. original petitioner No.1. Therefore, no liability to pay interest over the salary for period of absence from December, 2020 to January, 2021 could have been imposed upon the applicants.

5. Per contra, Mr. Venjane, learned advocate appearing for respondent opposes review application on basis of averments in the affidavit in reply filed on behalf of respondent Nos. 4 to 7.

6. It can be observed that writ petition was moved before this Court by legal heirs of deceased Nagorao Malhar Waghmare, who was permanent employee of the applicants. He worked as Assistant Teacher from 15th November, 2001 till his death on 30.4.2021. The school is receiving 100% grant in aid. However, family pension was not released to the legal heirs of Nagorao after his death. Therefore, they approached this Court seeking direction for release of family pension under old pension scheme as per the Maharashtra Civil Services Pension Rules,

1982 and allied provisions. The petitioners had also incorporated the prayer to release unpaid salary of the deceased for the period from 23.11.2020 to 31.1.2021 alongwith interest @ 12% p.a.

7. Considering the submissions advanced on behalf of learned advocates appearing for respective parties and the pleadings, this Court allowed the writ petition vide the order under review and issued directions against respondents in writ petition to release family pension to the petitioners. Since delay in forwarding proposal was writ large, liability to pay interest @ 9% p.a. was fixed against applicants till the realization of actual amount. Similarly, directions were issued against respondent authorities to process the salary dues of deceased from December 2020 to January, 2021. Even liability to pay interest @ 6% p.a. from 30.4.2021 was fixed against revive applicants.

8. Mr. Hon, learned senior advocate submits that certain factual aspects could not be brought to the notice of this Court in absence of affidavit in reply. We cannot approve such submission for entertaining review application since all the parties were before the Court and it was their responsibility to place on record the relevant factual aspects. Pertinently, when the writ petition was heard for final disposal, no request was advanced seeking accommodation for filing affidavit in reply. Therefore, the writ petition was considered and disposed of on the basis of factual matrix that was tendered into service before this Court.

9. However, the question that has been posed before us is, whether the applicants can be made liable to pay interest on family pension w.e.f. 30.4.2021 till actual realization of the amount as directed

in clause (II) of the order. Learned advocates appearing for respective parties fairly concede that Government Resolution dated 14.6.2023, introduced family pension to the family members of employee of granted schools, who died on or after 1.11.2005. In that view of the matter, petitioners cannot allege default of employer in moving the proposal for family pension. As rightly pointed out by Mr. Hon, learned Senior Advocate, the corrected proposal was moved by the School in pursuance of aforesaid scheme on 24.7.2023 and last such proposal was moved on 18.10.2023 after removing the deficiencies, as pointed out by the office of Deputy Director of Education, Latur. We find that applicants cannot be penalised to pay interest on Family pension by attributing delay in pursuing pension proposal. The observations made in order under review in this regard needs to be expunged.

10. In view of the aforesaid admitted position, we find partial substance in the review application and modify the clause No. (II) of the operative part of the order dated 18.3.2024 passed in W.P. No. 11133 of 2023 and replace the same as under :-

[II] The arrears of family pension granted in view of communication dated 10.2.2024 be paid to the petitioner No.1 forthwith.

The prayer for review of other relief stands rejected.

11. Review application is accordingly disposed of. Necessary correction be carried out in order dated 18.3.2024. Corrected copy be uploaded.

[S.G. CHAPALGAONKAR, J]
grt/-

[SMT. VIBHA KANKANWADI, J]