IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

REVIEW APPLICATION NO.214 OF 2024
IN
WRIT PETITION NO.13301 OF 2022

1) Kishor S/o Narayanrao Sawargaonkar,
Age-62 years, Occu: Retired Manager,
R/o Ranisawargaon Tq. Gangakhed,
District-Parbhani,

2) Sudarshan S/o Bhaurao Patil
Age-61 years, Occu: Retired,
R/o Flat No.9, Sharda Simran Park,
College Road, Patil Lane No.2,
Nashik, Taluka and District-Nashik,

3) Shashikant S/o Kashinath Bargode,
Age-60 years, Occu: Retired (Chief Manager),
R/o D-203, CD-115, Shrirang Unit No.15,
CHS Ltd. Shrirang Society, Thane (W),
Taluka and District-Thane

4) Jayshree W/o Anilrao Wadikar,
Age-59 years, Occu: Retired
(Office Assistant), R/o Plot No. 25,
Shrisadan, Narhar Nagar, Wadk (Bk),
Ring Road, Taroda Naka, Nanded,
Taluka and District-Nanded,

5) Anjali w/o Arun Bhalerao,
Age-62 years, Occu: Retired Manager,
R/o Flat No. A-01, Shrimohan Apartment,
Anand Vihar, Itkheda, Aurangabad,
Taluka and District-Aurangabad,

6) Sangeeta W/o Rajendra Kirve,
Age-56 years, Occu: Retired Manager,
R/o Building No.A-1/702,
Sadguru Garden Society,
Near Vijay Garden, Ghodbandar Road,
Kavesar, Thane (West),
Taluka and District-Thane

...APPLICANTS

VERSUS

1) The Union of India
Department of Financial Services,
Ministry of Finance, Govt. Of India,
Jeevandeep Building, Parliament Street,
New Delhi (Through its Secretary).

2) National Bank for Agriculture and Rural Development (NABARD)
Through its General Manager
Plot No.C-24, G Block, Bandra Kurla Complex,
Bandra (East), Mumbai.

3) Maharashtra Gramin Bank
Plot No. 43, Gat No. 33, (Part)
Village Golwadi Growth Center,
Waluj Mahanagar-4, CIDCO,
Aurangabad,
Through its General Manager.

4) The Board of Directors,
Maharashtra Gramin Bank,
Through its Chief Manager,
Plot No. 43, Gat No. 33, (Part)
Village Golwadi Growth Center,
Waluj Mahanagar-4, CIDCO,
Aurangabad.

...RESPONDENTS

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Mr. U.B. Bilolikar Advocate for Applicants.
Mr. R.S. Bhosale Advocate for Respondent No.2.
Mr. P.L. Shahane Advocate for Respondent Nos. 3 and 4.

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CORAM: SMT. VIBHA KANKANWADI AND Y.G. KHOBRAGADE, JJ.

DATE OF RESERVING ORDER : 13th JANUARY 2025

DATE OF PRONOUNCING ORDER : 27th FEBRUARY 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Review Application has been filed with the limited prayer that though the Writ Petition came to be allowed and petitioner Nos.1 to 6 were held to be entitled to receive the leave encashment for the period of 240 days and respondent No.3 was consequently directed to make the payment, the interest that has been granted is from the date of failure to make the payment within a period of 75 days and not from the date of the entitlement.

2. In order to consider the subject matter involved, we would like to say that the present applicants / original petitioners had filed the said Writ Petition No.13301 of 2022 for the aforesaid reliefs and it came to be decided on 27th June 2024 by the

Division Bench of this Court (**CORAM: RAVINDRA V. GHUGE AND Y.G. KHOBRAGADE, JJ.**). After considering the earlier decisions of the Hon'ble Supreme Court as well as this Court together with Regulation Nos. 61 and 67 of service conditions of the petitioners governed by Maharashtra Gramin Bank (Officers and Employees) Service Regulations, 2010 and Amended Regulations of 2018, the petitioners were held entitled to receive the leave encashment of 240 days. In fact the chart was given in the Petition as well as in Paragraph No.3 of the Judgment, as to which petitioner had joined on which date and what is the date of voluntary retirement of the concerned petitioner. In the prayer clause in the original Writ Petition, the petitioners had prayed for the writ to be issued of directions to Maharashtra Gramin Bank to disburse the amount of leave encashment of the petitioners as per their entitlement along with the interest at the rate of 18% per annum with immediate effect. However, since in the Judgment and order dated 27th June 2024 passed in Writ Petition No.13301 of 2022, the interest was not granted from the date of the retirement, the present Review Application has been filed.

3. Affidavit-in-reply has also been filed by respondent Nos.3 and 4 of Mr. Dattatraya Madhukar Kaveri, who is the Chief

General Manager of Maharashtra Gramin Bank, wherein after giving the facts once again, it is then stated that the Review Application is not maintainable as the jurisdiction for review under Order 47 Rule 1 of the Code of Civil Procedure is very much limited. The review is not on the basis of any discovery of new fact. In the Writ Petition, the petitioners had not prayed for any interest on delayed payment of amount of encashment of leave. 6% per annum interest has been awarded by this Court in the said decision if the amount is not paid within 75 days from the date of the order. The Bank has implemented the Judgment and paid the amount of leave encashment to the petitioners on 1st August 2024. In ***Vinayak Anandrao Patil and another vs. the Chairman, Maharashtra Gramin Bank and another (Writ Petition No.5870 of 2019, decided on 19th April 2024),*** also the Court had not granted the relief of interest on delayed payment. When the amount has been received by the petitioners, they are now estopped from claiming the amount once again. In fact the said issue, as to whether the encashment of leave can be allowed to the employees who take voluntary retirement was pending before the Department of Financial Services, Government of India. Guidance was sought by letters dated 15th February 2022 and 4th January 2023 from National Bank for Agriculture and

Rural Development (NABARD). As per the response received, it was stated that the decision would be taken at their level. The said issue is then still pending before the Government of India. Therefore, it cannot be said that it is a delayed payment and therefore, review is not permissible.

4. Heard learned Advocate Mr. Bilolikar for the applicants, learned Advocate Mr. Bhosale for respondent No.2 and learned Advocate Mr. Shahane for respondent Nos.3 and 4.

5. Learned Advocate for the applicants / petitioners has relied on the decision in ***Ashok S/o Munjappa Potphale and others vs. Chief Secretary, Union of India, Banking Division, New Delhi (Writ Petition No.1347 of 2016, decided on 17th February 2017)***. He submits that the facts in this case and the case of the petitioners are identical. The privilege leave encashment was refused by the banks and therefore, it was held that without any authority of law, respondent No.3 Bank therein had rejected the claim and deprived the petitioners of the benefit of their right to encash privilege leave and therefore respondent Nos. 3 and 4 therein were held to be liable to pay the interest on the amounts payable to the petitioners on account of their respective leave

encashment from respective dates of their termination / compulsory retirement from service till the date of actual payment. Here, in fact in the present case, voluntary retirement of the petitioners has been accepted, therefore, the petitioners are on the better footing. Still, the interest has not been given.

6. Learned Advocate for respondent Nos.3 and 4, by reiterating the contents of the affidavit-in-reply, further submits that there is no error apparent on the face of record in the order. It is in fact in the discretion of the Court whether to grant interest on any amount or not. As aforesaid, he relies on the decision in ***Vinayak Anandrao Patil and another vs. the Chairman, Maharashtra Gramin Bank and another*** (supra), wherein also the interest was not granted from the date of acceptance of the resignation of the petitioners therein. In this decision, it has been observed that the Bank cannot be penalized with interest for inaction on the part of the petitioners therein in filing the petition after lapse of some time. Learned Advocate for respondent Nos.3 and 4 also relies on the decision in ***Sanjay Kumar Agarwal and others vs. State Tax Officer (1) and others, AIR 2023 SC 5636***, wherein it is observed that the well considered Judgment sought to be reviewed did not fall within

the scope and ambit of review. After considering various decisions, in Paragraph 16 of the Judgment it is observed that:-

> "16. The gist of the afore-stated decisions is that:-
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> (i) A judgment is open to review inter-alia if there is a mistake or an error apparent on the face of the record.
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> (ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.
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> (iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.
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> (iv) In exercise of the jurisdiction under Order 47 Rule 1 of Code of Civil Procedure, it is not permissible for an erroneous decision to be "reheard and corrected."
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> (v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise. "
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> (vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.
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> (vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

> (viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review. "

7. The first and foremost fact is that the facts are not disputed. We would also reproduce the chart which has been given in Paragraph No.3 of the Petition as well as the Judgment, in order to better understand the date of relieving the petitioners:-

Sr. No.	Names of the Petitioners	Date of Joining	Date of voluntary retirement
1	Kishor Sawargaonkar	03.06.1982	07.04.2022
2	Sudarshan Patil	20.07.1990	30.09.2020
3	Shashikant Bargode	01.11.1988	01.06.2022
4	Jayshree Wadikar	24.09.1984	01.12.2020
5	Anjali Bhalerao	09.07.1990	10.12.2021
6	Sangita Kirve	01.02.1989	10.12.2021

8. Here it is to be borne in mind that the petitioners had taken benefit of the voluntary retirement scheme. They are termed as voluntary retired employees. In other words, it was considered that they were not terminated nor made to retire compulsorily. Relying upon the earlier decisions, then they were held to be entitled for the leave encashment for the period of

240 days. Since respondent Nos.3 and 4 are stated to have abided by the order, we need not consider much more facts. The only point which requires consideration is that if they were already entitled for the leave encashment and then in case of non payment, who would then be liable to pay the interest. The voluntary retirement scheme is in existence since long in the banks. It is hard to believe that even till today it has not been decided, as to whether the interest would be applicable for the delayed payment of such leave encashment or not. The prayer clause in the main Writ Petition clearly states that the interest was demanded from the date of entitlement of the petitioners. Certainly, the date of entitlement would be when their request for voluntary retirement was considered and they were relieved, i.e. the last column of the tabular chart, above given. Even taking into consideration the date of voluntary retirement for petitioner Nos. 2 and 4 to be in 2020, yet the Writ Petition that was filed in 2022, cannot be said to be belated, for the simple reason that the record and proceedings in the matter show that petitioner No.2 had issued notice on 5th September 2022. Instead of clearing the payment, the Bank thought it fit to reply the notice. When the amount has been unnecessarily withheld and when in fact those employees who were made compulsorily

retired by way of punishment were held to be entitled to get the leave encashment with interest by the Judgment and order dated 17th February 2017 in ***Ashok S/o Munjappa Potphale and others vs. the Chief Secretary, Union of India, Banking Division, New Delhi*** (supra), the Bank ought not to have withheld the amount in this case also. The Judgment in the case of ***Ashok Munjappa Potphale and others*** (supra) has been relied upon in this case also. Though respondent Nos. 3 and 4 are relying upon ***Vinayak Anandrao Patil and another vs. the Chairman, Maharashtra Gramin Bank and another*** (supra), it is to be noted from Paragraph No.13 of the said decision that the petitioners therein had resigned from service on 8th June 2011 and 25th December 2009 respectively and they have filed the petition on 25th March 2019 and therefore, it was observed that the Bank cannot be penalized with interest for the inaction on the part of the petitioners for a considerable time. Reason was given for refusing to award interest. However, in the present matter, inadvertently no such reasons have been mentioned though there is a claim in the prayer clause. Further, the operative order says that the Writ Petition is allowed and not partly allowed.

9. Recently, the Hon'ble Supreme Court in ***Dr. Poornima***

Advani and another vs. Government of NCT and another [Civil Appeal No.2643 of 2025 (arising out of S.L.P. (Civil) No. 594 of 2020, decided on 18th February 2025], has dealt with the point regarding the payment of interest. Of course it was on the different point, but the following observations, which are applicable in respect of concept of awarding interest on delayed payment, would be applicable in each case:-

> "16. The concept of awarding interest on delayed payment has been explained by this Court in the case of Authorised Officer Karnataka Bank v. M/s R.M.S. Granites Pvt. Ltd. & Ors. in Civil Appeal No. 12294 of 2024, we quote the following observations:-
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> > "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 had to pay B a certain amount, say ten 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 ten years ago, B would have invested that amount somewhere and earned interest thereon, 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. [See: Alok Shanker Pandey v. Union of India : AIR 2007 SC 1198"
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> 17. Thus, when a person is deprived of the use of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which may be called interest or compensation. Interest is paid for the deprivation of the use of money in general

terms which has returned or compensation for the use or retention by a person of a sum of money belonging to other.

18. As per Black's Law Dictionary (7th Edn.): "interest" is the compensation fixed by agreement or allowed by law for use or detention of money or for the loss of money of one who is entitled to its use, especially, the amount owned to a lender in return for the use of the borrowed money.

19. As per Stroud's Judicial Dictionary of Words and Phrases (5th edn.): interest means, inter alia, compensation paid by the borrower to the lender for deprivation of the use of his money.

20. In the case of Secretary, Irrigation Department, Government of Orissa v. G.C. Roy, (1992) 1 SCC 508, a Constitution Bench of this Court opined that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This is also the principle of Section 34 of the Civil Procedure Code.

21. The essence of interest as held in the case of Lord Wright in Riches v. Westminister Bank Ltd., 1947 (1) ALL ER 469, at page 472, is that it is a payment, which becomes due because the creditor has not had his money at the due date. It may be recorded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use.

22. In the case of Commissioner of Income Tax v. Dr. Sham Lal Narula, AIR 1963 Punjab 411, a Division Bench of the High Court of Punjab articulated the concept of interest as under:-

> "The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. ……… In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another, or for the delay in paying money after it has become payable." (Emphasis supplied)

10. It appears that by communication dated 12th November 2020, it was informed by the Assistant General Manager, National Bank for Agriculture and Rural Development that his office would inform that that matter has been examined by them and taken up with the Department of Financial Services, Government of India for appropriate decision at their level. If the decision is taken then that will be advised to all the regional rural banks. The Writ Petition was filed in 2022. Further, there also appears to be communications on 15th February 2022 and on 4th January 2023 by the General Manager, Maharashtra Gramin Bank to know whether any decision has been taken. Except communications, there is nothing. The petitioners cannot

be deprived of for such inaction on the part of the Department of Financial Services, Government of India. The amount was due from the date of acceptance of their voluntary retirement and when this amount is not paid, the petitioners are entitled to the interest, which according to us, should be 6% per annum, from the date of their respective retirement till 1st August 2024.

11. Strict rules of Code of Civil Procedure will not be applicable here. Certainly, there is error apparent because the prayer was made but was not considered though the Writ Petition is allowed and therefore, the review is maintainable.

12. For the aforesaid reasons, we proceed to pass the following order:-

O R D E R

(I) The Review Application stands allowed.

(II) In addition to the order passed in Writ Petition No. 13301 of 2022, dated 27th June 2024, in the operative part of the order, following Clause No.3 (a) is added:-

"3(a). Respondent No.3 is directed to pay interest at the rate of 6% per annum on the amount of leave encashment paid to the respective petitioners from the date of respective date of voluntary retirement of the petitioners till 1st August 2024, within the period of one month from today."

[Y.G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB25