

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

WRIT PETITION (L) NO. 36169 OF 2024

Narayan Pundalik Pathade
Aged 65 years, residing at
101, Shree Samarth Arcade,
Off. M.P. Road, Mulund (East),
Mumbai – 400 081.

... Petitioner

Versus

1. Municipal Corporation of
Greater Mumbai, through its
Commissioner, having its office
At Head Officer, Municipal
Corporation of Greater Mumbai Bldg.,
CST, Mumbai – 400 001.
2. Municipal Secretary,
Municipal Corporation of Greater
Mumbai, having its office at
Mahapalika Marg, Mumbai – 400 001. ... Respondents.

Mr. C.K. Bhangoji a/w. Ms. Lata Bhangoji, for the Petitioner.

Mr. Shivprasad D. Borade, for the Respondent-Municipal Corporation.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

**RESERVED ON : 28th FEBRUARY, 2025.
PRONOUNCED ON : 11th MARCH, 2025.**

JUDGMENT (BY ASHWIN D. BHOBE, J) :

1. Rule. Rule made returnable forthwith. Heard finally by the

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consent of the parties.

2. By this petition filed under Article 226 of the Constitution of India, Petitioner, a retired employee of Respondent No. 1 Corporation seeks a direction to the Respondent No. 1 to pay interest to the Petitioner, on the delayed payment of his retiral benefits.

3. **FACTUAL MATRIX :**

(a) Petitioner joined the Respondent No. 1 Corporation on 09.06.1986, as a clerk. Petitioner was promoted to the post of Municipal Secretary in the year 2012.

(b) On 18.05.2017, just prior to the Petitioner attaining the age of superannuation, the Respondent No. 1 initiated Departmental Inquiry against the Petitioner. Charge-sheet alleged irregularity in the recruitment process for the post of clerk's in the office of Municipal Secretary, held in the year 2013.

Petitioner contested the allegations, as also initiation of the inquiry, and the timing of the inquiry on the grounds of malice.

(c) On 31.05.2017, Petitioner retired from service upon attaining the age of superannuation.

(d) Provident fund was paid to the Petitioner on 26.10.2017.

(e) Provisional pension was paid to the Petitioner on 02.12.2017.

(f) On 17.11.2018, the Petitioner approached the National Commission for Scheduled Castes, New Delhi making grievance against the Departmental Inquiry initiated by the Respondent No. 1.

(g) On 24.09.2019, the National Commission for Scheduled Castes, New Delhi, made the following recommendation:- *“The Commission recommends that the inquiry set up against Shri Narayan Pathade may be set aside and consider his case favourably. The pending dues of the Petitioner may also be paid immediately”*.

(h) Respondent No. 1 questioned the jurisdiction of the National Commission for Scheduled Castes, New Delhi, to issue directions in service dispute, before this Court in Writ

Petition (L) No. 3111 of 2019.

(i) By order dated 03.10.2019, Respondent No. 1 exonerated the Petitioner. Operative part of the said order reads as follows:- *“As per order of the Hon’ble Municipal Commissioner as above, as not a single charge out of 4 charges levelled against the Municipal Secretary Shri Narayan Pundalk Pathade is not being proved he is being exonerated.”*

(j) This Court in its order dated 04.11.2019 passed in Writ Petition (L) No. 3111 of 2019 has recorded the following statement made on behalf of the Respondent No. 1:- *“Learned counsel for the petitioners stated that the inquiry against respondent No. 2 has been dropped upon his exoneration and retirement dues which were withheld on account of pending inquiry will be released shortly.”*

(k) Following amounts were released to the Petitioner:-

	<u>Particulars</u>	<u>Amount</u>	<u>Paid on</u>
i.	Gratuity	Rs.10,00,000/-	22.11.2019
ii.	Commutation of Pension.	Rs.7,78,954/-	22.11.2019
iii.	Earned Leave	Rs.10,20,244/-	18.12.2019
iv.	Half Pay Leave	Rs. 8,95,736/-	18.12.2019

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v.	L.T.A.	Rs. 10,500/-	18.12.2019
vi.	Ex Gratia	Rs. 14,500/-	18.12.2019

(l) By representation dated 22.05.2020 and 07.09.2020, the Petitioner called upon the Respondent No. 1 to pay interest on the delayed payment on his retiral benefits.

(m) Petitioner is before this Court seeking the following substantial reliefs :

“(a) This Hon’ble Court be pleased to issue Writ of Mandamus and or any other Writ, Order or Direction in the nature of Mandamus thereby directing the Respondent Corporation to pay the interest to the petitioner on his delayed payment of his retirement benefits in accordance with law.”

4. Respondents have chosen not to file their reply.

SUBMISSIONS :-

5. Mr. C.K. Bhangoji, learned Advocate for the Petitioner submits that the retirement benefits of the Petitioner were withheld by the Respondent No.1 on account of the pending inquiry, on the date of his retirement. He submits that upon exoneration in the departmental inquiry, payment of the retirement benefits will be deemed to have become due and payable on the date immediately following the date of retirement. Relying on Rule 55A(7) of the Pension Rules, 1953 of the

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Municipal Corporation of Greater Mumbai, he submits that the Petitioner is entitled to interest on delayed payment of retirement benefits. He submits that Petitioner in his representation dated 07/09/2020 had placed before the Respondent no.1 the amounts that would be payable to the Petitioner on account of the delayed release of retirement benefits. He submits that the Respondents are liable to pay interest @ 18%. He therefore prays that the Petition be allowed.

6. Mr. Shivprasad D. **Borade**, the learned Counsel for the Respondents places on record letter dated 27.02.2025 of the Respondent No.1 addressed to the Petitioner and submits that the Petitioner was informed that no amount was payable to the Petitioner. He submits that upon the Petitioner being exonerated in the departmental inquiry, the Petitioner was paid all his retirement benefits. He submits that the said payments were made within 3 months from the date of exoneration, as such no interest was payable. According to him, the interest free period of 3 months would have to be computed from the date of exoneration. In support of his contention that if the payment is made within 3 months, no interest is liable to be paid, he relies on Rule 55A(1) of the Pension Rules, 1953 of the Municipal Corporation of Greater Mumbai. He disputes the contention of the Petitioner and submits that provisions of

Rule 55A(1) and 55A(7) of the Pension Rules, 1953 of the Municipal Corporation of Greater Mumbai are required to be read harmoniously. For all the said reasons he seeks dismissal of the petition.

7. From the rival contentions of the parties, the question that falls for determination is whether the Petitioner upon his exoneration from departmental inquiry is entitled to payment of interest on his retiral benefits, which were withheld by the Respondent No. 1, pending inquiry ? If yes, quantum of interest?

ANALYSIS :

8. Date of retirement of the Petitioner; his entitlement to the retiral benefits, as also the dates of payment of the amounts made to the Petitioner by the Respondent No. 1 and applicability of the Pension Rules, 1953 of the Municipal Corporation of Greater Mumbai (Pension Rules”) to the case of the Petitioner are facts which are not in dispute. Issue is entitlement of interest on the retiral benefits, payment of which was not made in view of the pending inquiry, on the date of Petitioner’s retirement.

9. Dispute revolves around Rule 55A(1) and Rule (7) of the Pension

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Rules . It would be apposite to reproduce the said Pension Rules :

“New Rule 55A

Interest on delayed payment of gratuity.

(1) If the payment of gratuity has been authorised after three months from the date when its payment became due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the following rate on the amount of gratuity in respect of the period beyond three months shall be paid :-

(i) beyond 3 months and upto one year – 7%

(ii) beyond one year - 10%

Provided that the delay in the payment was not caused on account of failure on the part of the Municipal servant to comply with the procedure laid down in this behalf.”

“(7) Payment of gratuity is not made in case of employees against who departmental or judicial enquiry is pending. However, on completion of departmental/judicial enquiry, if the Municipal servant is acquitted of the charges levelled against him and if the competent authority sanctions the payment of gratuity the payment will be deemed to have become due and payable on the date immediately following the date of retirement. No interest will however, be payable in case Municipal servant in whose case departmental/judicial enquiry has been withdrawn due to death of Municipal employee.”

10. Contention of the Respondents is that the Petitioner was exonerated on 30.10.2019. According to the Respondents, harmonious reading of Rule 55A(1) and 55A(7) of the Pension Rules, would mean that Respondents had a interest free period of three months to make the said payment from 30.10.2019. Entire retiral benefits having been paid

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to the Petitioner within a period of 3 months from 30.10.2019, the issue of delayed payment and the consequent payment of interest would not arise.

11. In the wake of the above submission we have considered Rule 55A(1) and 55A(7) of the Pension Rules, which are as under :-

“a. Rule 55A(1) of the Pension Rules, refers to a situation where the payment of gratuity has been authorised after three months from the date when its payment became due. Period beyond three months of such authorization, would amount to delay. Further such delay must be attributable to administrative lapse, which lapse has to be clearly established.

b. Rule 55A(7) of the Pension Rules, contemplates a situation, authorizing the Respondent No.1 to withhold payment of gratuity in case of employees against whom departmental or judicial inquiry is pending. On completion of such departmental/judicial inquiry and in the event of exoneration / acquittal of the employee, of the charges levelled in such inquiry, the competent authority sanctions the payment of gratuity the payment will be deemed to have become due and payable on the date immediately following the date of retirement.”

12. As per the provisions of the Payment of Gratuity Act, 1972, “Gratuity” is payable to an employee on termination of his employment after he having rendered continuous service for not less than five years.

Due date for payment of Gratuity would be after one month, either upon superannuation or retirement or resignation or death or disablement due to accident or disease.

Rule 55A(1) of the Pension Rules would be attracted if the payment of gratuity has been authorized after three months from the date when its payment became due.

Whereas Rule 55A(7) of the Pension Rules, is a provision which permits the employer to withhold the payment gratuity on its due date, on account of pending inquiry on such due date, however with a rider that in the eventuality of an acquittal / exoneration in the inquiry, the payment of gratuity being sanctioned by the competent authority, will be deemed to have become due and payable on the date immediately following the date of retirement. The said Rule is in furtherance of the concept that money retained without right carries with it a right to interest. Thus, intention of the said Rule 55A(7) appears to compensate the employee for the retention of the gratuity amount belonging to him, considering the uncertainty in the time taken for disposal of departmental / judicial inquiries. .

13. Doctrine of “harmonious construction” would come into play if

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there is any ambiguity either patent or latent in the Rule 55A(1) and 55A(7) of the Pension Rules. On the reading of the Rules Rule 55A(1) and 55A(7) of the Pension Rules, we are unable to accept the said contention of the Respondents. We find no ambiguity in the said Rules.

14. Retiral benefits payable to the Petitioner were withheld on account of the pending departmental inquiry. Respondent No. 2 in his letter dated 27.02.2025, has stated that pursuant to the order dated 30.10.2019, the retiral benefits payable to the Petitioner were sanctioned and paid on 16.11.2019 and 13.12.2019, respectively. Provisions of Rule 55A(7) of the Pension Rules, stood attracted and the date of payment gratuity to the Petitioner became due and payable on 01.06.2017. Petitioner would thus be entitled to payment of interest on the delayed payment of gratuity / retiral benefit.

15. Pensionary benefits are welfare provisions, which are compensatory in nature. It is trite law that interest is not a penalty or punishment at all but is the normal accretion on capital. A person has a right to be compensated, when he is deprived of the use of his money. In the instant case, the Petitioner was deprived of the use of his money, which was otherwise legitimately entitled to on the date of his retirement

i.e. 31.05.2017. But for the pendency of the departmental inquiry, the Petitioner would be entitled for the payment of retiral benefits.

16. The contention of the Advocate for the Respondents that the employee would have a interest free period of 3 months from exoneration/acquittal of an employee, to make the payment if considered, would create a situation where the employer would retain the amounts due and payable to a employee for years together on the spacious plea of a pending inquiry. Such a situation would defeat the doctrine of restitution.

17. Law on grant of interest on delayed payments of retiral benefits is no longer res integra. The principle that disbursement of pension and other retirement benefits should not be treated as a matter of bounty but are valuable rights and property and any delay in settlement or disbursement thereof must be compensated with payment of interest is settled in the decision of the Hon'ble Supreme Court in the case of *State of Kerala v/s Padmanabhan Nair*¹ and in the case of *D.D. Tewari v/s Uttar Harayana Bijlr*².

1 (1985) 1SCC 429

2 (2014) 8 SCC 894

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18. Useful reference can be made to the decision of the Hon'ble Supreme Court in the case of *Dr. Poornima Advani and Another v/s. Government of N.C.T. & Anr.*³, wherein the Hon'ble Supreme Court was dealing with a case of entitlement of the Petitioner therein to claim interest on refunded amount. Observations in paragraph 16, 17, 18, 19, 20, 22, 23, 24 and 25 has held as under :

“16. The concept of awarding interest on delayed payment has been explained by this Court in the case of Authorised Officer Karnataka Bank v. R.M.S. Granites Pvt. Ltd. in Civil Appeal No. 12294 of 2024, we quote the following observations:—

“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, (2007) 3 SCC 545 : AIR 2007 SC 1198.]”

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.

³ 2025 SCC OnLine SC 419.

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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](#).

22. In the case of *Commissioner of Income Tax v. Dr. Sham Lal Narula*, AIR 1963 Punj 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)

23. The appeal filed against aforesaid decision was dismissed by this Court in *Sham Lal Narula Dr. v. CIT*, [AIR 1964 SC 1878](#).

24. In the case of *Hello Minerals Water (P) Ltd. v. Union of India*, [\(2004\) 174 ELT 422](#), (paras 15 and 16), a Division Bench of the Allahabad High Court explained the concept of interest as under:—

“15. We may mention that we are passing the direction for interest since interest is the normal accretion on capital. Often there is misconception about interest. Interest is not a penalty or punishment at all.

16. For instance, if A had to pay a certain sum of money to B at a particular time, but he pays it after a delay of several years, the result will be that the money remained with A and he would have earned interest thereon by investing it somewhere. Had he paid that amount at the time when it was payable then B would have invested it somewhere, and earned

interest thereon. Hence, if a person has illegally retained some amount of money then he should ordinarily be directed to pay not only the principal amount but also the interest earned thereon.

Money doubles every six years (because of compound interest). Rs. hundred in the year 1990 would become Rs. two hundred in the year 1996 and it will become Rs. 400 in the year 2002. Hence, if A had to pay B a sum of rupees 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs. 300 with himself. This clearly cannot be justified because had he paid that amount to B in the year 1990, B would be having Rs. 400 in the year 2002 instead of having only Rs. 100/-. Hence, ordinarily interest should always be awarded whenever any amount is detained or realized by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon which will be pocketed by the person who managed the delay, it is for this reason that we have ordered for payment of interest alongwith the amount realized as export pass fee.”

INTEREST IS NORMAL ACCRETION ON CAPITAL

25. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term “restitution” is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.”

19. The Respondents therefore, cannot be permitted to deny the Petitioner interest on delay payment of retiral benefits. **This Writ Petition is allowed.** We direct the Respondents to pay interest @ 10% on the amounts payable to the Petitioner as retiral benefits as on his date of retirement i.e. 31.05.2017.

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20. In the aforesaid circumstances, applying the law laid down by the Hon'ble Supreme Court, Respondents are directed to pay interest on account of delayed payment for the period 01.06.2017 till the date of payment made to the Petitioner in the year 2019 @ 10% p.a. The said exercise shall be completed by the Respondent No. 1 within a period of 4 weeks from today. The Petitioner is at liberty to place before the Respondent No. 1 his calculations.

21. Rule is made absolute in above terms with. No orders as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)