IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10595 OF 2016

Vijaykumar Sambayya Matpati
and others ..**Petitioners**

Versus

The State of Maharashtra and others .. **Respondents**

Mr. Suhas P. Urgunde, Advocate for the Petitioners.
Mr. S. B. Joshi, A.G.P. for Respondent Nos. 1 to 3.
Mr. P. R. Tandale, Advocate for Respondent Nos. 4 and 5.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 29th October, 2018

PER COURT :

1. Mr. Urgunde, learned counsel for the petitioners submits that in July – 2007 one / two advance increments were given to the petitioners. Abruptly under the impugned orders the said advance increments granted are withdrawn and recovery is also claimed. The learned counsel submits that the same is done without notice to

the petitioners and without hearing the petitioners. It is further submitted that as per the Government Resolution dated 27.02.2009, the decision is not yet taken by the respondents about the manner of giving the advance increments.

2. Mr. Tandale, learned Advocate for the respondent – Zilla Parishad submits that the action of the respondent – Zilla Parishad in cancelling the advance increments given to the petitioners and claiming recovery is in consonance with the Government Resolution dated 24.08.2017. As per the said Government Resolution, the petitioners are not entitled to the advance increments from 01.10.2006 to 01.10.2015.

3. Mr. Joshi, the learned A.G.P. submits that the Government had given instructions in the year – 2009 in respect of the implementation of the benefits of Sixth Pay Commission giving benefits from 01.01.2006. The Pay Fixation Rules – 2009 regarding sanction of advance increments i.e.

issue no. 27 in the said Pay Fixation Rules. The decision is still pending before the Government. The Government had issued a circular dated 03.07.2009 thereby clarifying that those who have been given advance increments in accordance with Sixth Pay Commission their pay fixation shall be done for temporary period without advance increments in their pay scales. As soon as the Government takes a decision in respect of the additional increments, their pay fixation would be done accordingly. The learned A.G.P. further submits that the decision has not yet been taken.

4. We are inclined to entertain the petition for two reasons -

[I] The advance increments have been granted to the petitioners for the excellent work in the year 2006 – 2007 and before passing the impugned orders cancelling the advance increments no prior notice is given to the petitioners. It is trite that even if erroneously pay fixation is done, the same

cannot be set aside without notice to the party. Reliance can be had to the judgment of the Apex Court in a case of **Bhagwan Shukla Vs. Union of India and others** reported in **AIR 1994 SC 2480**.

[II] The respondents are relying on the Government Resolution dated 24.08.2017, that is subsequent to the impugned orders passed.

5. In the light of above, the impugned orders are quashed and set aside. If any amount is recovered by the respondents, same should be paid to the petitioners. The respondents, if they so desire, may issue notice to the petitioners and then take appropriate action as per the rules.

6. The writ petition accordingly stands disposed of. No costs.

[R. G. AVACHAT, J.] **[S. V. GANGAPURWALA, J.]**

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