

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4050 OF 2017

Uday J. Godave and ors. ...Petitioners
V/s.
The State of Maharashtra and ors. ...Respondents.

Mr. P.S. Gole for the Petitioners.
Mr. S.S. Panchpor, AGP for the Respondent – State.
Mr. R.D. Rane for Respondent No.4.

CORAM : K.K.TATED &
N.R. BORKAR, JJ.
DATE : 22th OCTOBER, 2020.
(Through V.C.)

P.C. :

1. Rule.
2. By consent of the parties, the matter is heard finally.
3. By this Petition under Article 226 of the Constitution of India, the Petitioners are challenging the Circular dated 3rd July 2009 and Government Resolution (G.R.) dated 24th August 2017.
4. The Petitioners are employees of Zilla Parishad, Kolhapur. Pursuant to the G.Rs. dated 11th February 1974 and 31st October 1989, the Petitioners in view of their outstanding work were granted either one or two advance increments as on 1st October 2006, 1st October 2007 and 1st October 2008. The Petitioners state

that the Respondent – State, however, by Circular dated 3rd July 2009 instructed to fix the pay in a revised pay scale as per the recommendation of Sixth Pay Commission without taking into consideration advance increments granted on 1st October 2006, 1st October 2007 and 1st October 2008. It is stated that the Respondent – State, then issued the G.R. dated 24th August 2017 and reiterated the instructions issued by Circular dated 3rd July 2009. The contention is accrued and vested rights of the Petitioners cannot be taken away by the impugned G.R..

5. On 14th November 2019, Smt. Geeta R. Kulkarni, Deputy Secretary, General Administration Department, Mantralay, Mumbai filed an additional Affidavit-in-Reply on behalf of Respondent No.1. Paragraph Nos. 3, 4 and 5 of the said additional Affidavit-in-Reply read thus:

“3. I further say and submit that this Hon'ble Court, at Aurangabad bench in W.P.No.10348/2019 (Dilip Sambhaji Malve and others.) has given Judgment on 21.08.2019. In said Judgment their Lordships has mentioned that the Government Resolution dt.24.08.2017 will have prospective effect and not retrospective and in that case if benefit was accorded to petitioners of excellent work in the year 2006 to 2009, then same shall not be withdrawn and if any recovery is made pursuant to the same, same shall be refunded to the petitioners. The copy of the said judgment hereto Annexed and marked as Exhibit-I.

4. *I say and submit that this Hon'ble Court, at Aurangabad bench in its another Judgment in W.P.No.11599/2019 on the subject of Advance Increment to District Awardee Teachers dated 21.09.2019 has given six months period for considering the claim of petitioners. The copy of the said Judgment hereto Annexed and marked as Exhibit-II.*

5. *I say and submit that the Government, in view of this 6 months period granted by this Hon'ble court, has undertaken steps, to take necessary steps in the issue as stated above. The matter is not only related with petitioners but also all such state employees. Therefore in this matter the policy decision has to be taken at the level of Government In consultation with Law and Judiciary Department and Finance Department. For this more time is required. Therefore, by considering period given by the Honble High Court, at Aurangabad bench in above mentioned Writ Petition No. 11599/2019, I urged this Hon'ble Court to grant period of six months to settle the matter."*

In view of paragraph No.5 of additional Affidavit-in-Reply, it was incumbent upon the Respondent - State to take a policy decision with regard to issue in question, within six months. However, no policy decision is placed on record till date.

6. This Court (Aurangabad bench) in Writ Petition No. 14797 of 2017 (*Ganpat Vitthal Dapute and Ors vs. The State of Maharashtra and ors*) vide its order dated 11th June 2019, held that the G.R. dated 24th August 2017 will have prospective effect. This Court, accordingly, held that the benefit of advance increments granted as per the policy of the Government prevailing at that time, the

same would not be withdrawn on the basis of subsequent G.R. dated 24th August 2017. Considering the fact that the Respondent – State has not yet taken any policy decision with regard to issue in question, we are constrained to pass similar order. In the result, we pass the following order.

- a. The Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the Respondent – State dated 11th February 1974 and 31st October, 1989 in the revise Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July 2009 and G.R. dated 24th August 2017.
- b. Recovery, if any, made pursuant to the Circular dated 3rd July 2009 or G.R. dated 24th August 2017 from the Petitioners shall be refunded to them.
- c. Rule made absolute accordingly.
- d. No order as to costs.
- e. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

[N.R.BORKAR, J]

[K.K.TATED, J]